Using People –
Scope, Role and Justification of a Common Sense Concept

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Preface

The assumption that it is morally wrong to use a person is deeply entrenched in common sense morality. To blame another person by saying 'You were just using me!' is always a serious accusation and usually accompanied by strong negative emotions. In the light of these strong intuitions it is not surprising that many moral philosophers avail themselves of the concept of using people as well. The prohibition against using people therefore plays an important role in the theoretical discussions of moral philosophy, and in Applied Ethics diverse practices are judged by asking if they involve the use of persons. The common employment and broad acceptance of the prohibition notwithstanding, there are still a number of intriguing questions that have to be answered: First, we have to

know what practices actually fall within the scope of the prohibition against using people. Second, it is unclear what exact role the prohibition can play within moral theory. Third, it still needs to be explained why using people is morally wrong. This book pursues the aim of giving coherent answers to these three questions about the scope, the role and the justification of the prohibition against using people.

In pursuing these aims, at many points in my argument I will stress that the common sense concept of using people is already a rich and fascinating notion. It is my conviction that moral theorists have to take this pretheoretical material into account, if they want to take advantage of the strong intuitions that come along with the colloquial use of this concept. The common sense notion cannot answer our questions by itself, though, and needs to be improved and rearranged by moral theory. The first philosopher who picked up this notion that already was popular at the time was Immanuel Kant. Kant adopted this concept and gave it a central position in his moral theory by using it to spell out one version of the Categorical Imperative, his famous Formula of Humanity: ‘So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.’ Almost all existing analyses of the notion of using people refer at some point to this formula.

In the past two decades we have witnessed an increasing interest in Kant's account of using people and recently a re-evaluation of its central ideas. All these contemporary accounts are inspired by Kant, but also claim to do justice to the common sense notion. In this book I draw equally on both sources, but I will neither try to give a detailed picture of the common sense notion, nor will I enter deeply into Kantian exegesis. Instead it is my aim to give an improved answer to the systematic questions concerning the scope, the role and the justification of the prohibition against using people.

In the first chapter I will present my methodological approach in answering the above questions. I am inspired methodologically by Bernard Williams' idea of thick concepts as well as by John Rawls' notion of a wide reflective equilibrium. Both stress the importance of taking seriously the ideas that guide our moral judgements in everyday life. I will thus survey our common sense concept of using people in the second chapter and try to present it in its breadth as well as in its depth. The third chapter deals with Kant's account of using people. Kant's work alludes to this and related ideas at numerous places, but he does not offer a coherent theory. My presentation of Kant will therefore be a loose collection of quotations and summaries that is primarily meant to give an overview of the material that inspired my own and the other accounts of using people that I present in this book. The following three chapters are dedicated to these contemporary accounts which I

labelled the 'procedural', the 'attitudinal' and the 'value-based' account. I profited greatly from all of these theoretical proposals on how to form the common sense concept of using people, although my own account is closest to the last one. In developing my own proposal I combine elements of all other accounts and argue at the same time that my account comes closest to the ideas that we find in common sense. I call my own proposal the 'contextual' account of using people, as I argue that we need to supplement the moral principle offered by the value-based theory with the description of a concrete context that allows us to derive particular moral duties from this general principle. During the whole text I found it helpful to rely on a short story written by Vladimir Nabokov that describes a paradigmatic case of using people. Literature is able, I believe, to bring even subtle and ambiguous moral intuitions to our consciousness and can therefore provide good test cases to evaluate our moral theories. This being said, I want to stress that neither literary texts nor common sense notions can replace accurate moral theory. Literature and common sense often leave us puzzled and helpless in the face of the moral problems that we confront in our lives. It is the careful theoretical reflection of test cases and common sense notions that offers solutions to these problems. I hope that my attempt to theoretically shape the concept of using people will help to confront some of our moral problems.

I Methodological Introduction

1. A literary example

More than 15 years before publishing his world-famous novel *Lolita* Vladimir Nabokov wrote a short-story with a similar plot.[1] This novella, entitled *The Enchanter*, and *Lolita* share an important part of the story, but they differ significantly not only in length, but also in content, narrator's perspective and composition of characters. *The Enchanter* focuses on the immoral core of the plot, leaving aside the character and collaboration of the girl and the first-person-narrator's unreliable but mitigating presentation of the strongly repelling events. The novella therefore challenges the reader's moral sensibilities even more than *Lolita* does. But Nabokov presents the case with many complexities and provides his readers with a comprehensive picture of the moral wronging that is the topic of this book. I will thus start my considerations with this literary example and come back to it at several points in my argument. In this chapter, I want to use the example to illustrate my methodological approach.

The story of *The Enchanter* can be summarised as follows: A paedophile marries a terminally ill woman in order to obtain custody

of her daughter. Shortly after the marriage the mother dies and the eponymous ‘enchanter’ takes his stepdaughter on a trip by car. In a hotel he masturbates looking at the half-naked girl supposing that she is asleep. The girl wakes up, however, begins to scream and thereby attracts the other guests of the hotel. The enchanter escapes from the hotel and throws himself in front of a truck.

I think everyone who listens to the events of Nabokov’s novella is shocked by its protagonist’s behaviour. The game he plays with mother and daughter is abhorrent and only the end of the story alleviates our indignation when the ‘cynical, contemptible protagonist’ receives a due punishment.[2] But while it is clear that the enchanter’s behaviour is wrong, it is not obvious why we find it so repelling. In fact, the enchanter does not kill or rape or physically violate the girl or her mother. He does not commit any of the crimes that easily come to mind when we think of the atrocities committed by human beings.[3] But we certainly find his behaviour strongly despicable. What, then, explains our indignation towards the events that Nabokov relates?

There are, of course, many ways to characterize the flaws of character and behaviour that the story's protagonist exhibits. Edmund White, for example, calls the enchanter a man ‘with a hard heart and calculating loins’[4] and Angela Carter characterizes him as ‘a constantly self-justifying but hitherto thwarted pervert’[5]. For my

purposes, the most interesting characterization of the moral wrongs that are depicted in the story is offered, though, by Nabokov's son Dmitri in the postscript to his edition of the text. He criticizes the enchanter by saying that the woman is to him 'a repellent means to a criminal end and the girl an instrument for his gratification'[6]. In my opinion, this description accurately captures our intuitions towards the summary of the story given above. It seems very convincing to say that the protagonist's treatment of both the mother and the daughter is repelling because he regards them merely as means and tools in his sneaky plan. Furthermore, the description fits well with many passages of the original text. This is obvious when the narrator tells us that the protagonist thinks of the mother 'that the material, apart from its specific function, had no potential whatever'[7] or when he values the relationship with her solely for its 'direct benefit'[8]. Dmitri Nabokov thus offers a good explanation of the strongly repellant feelings we have towards the events narrated in the novella and it is fair to say that, at least at first glance, his characterization has an intuitive explanatory power.[9]

2. Explanatory power

Thus far, I have presented a literary portrayal of a moral wronging and I have argued that the narrated events can be convincingly characterized by saying that the protagonist is treating the other characters of the story merely as means. But what is it that makes this characterization attractive? What constitutes our intuition that the expressions used by Dmitri Nabokov have an explanatory power?

Vladimir Nabokov's novella presents us with a chain of events that raise feelings of indignation and disgust, but the novella itself does not tell us why these feelings are justified. We were therefore looking for an alternative characterization of the depicted events, one that not only narrates what was happening. The search for such a characterization is motivated by practical aims: We want to describe moral situations in such a way that we can explain to ourselves and to others why we feel about them in the way we do. We argue with others and try to convince them about the adequacy of our reactions and about their underlying reasons. In addition, we not only judge the behaviour of others, but often want to decide for ourselves what to do. We therefore picture the character of the available options and sometimes this reflection on possible courses of action is not carried

out with regard to a particular decision but to find out for ourselves which values we want to guide our lives. We are therefore looking for characterizations of real or possible events that not only tell us what happens, but that also reveal the event's evaluative character.

The value of an event is constituted by our emotional reactions and by actions that are an adequate response to the value-bearers. Emotions and reasons for action come in binary quality and continuous quantity: They are *for* or *against* an action or attitude and they are stronger or weaker on a gradual scale. They are furthermore understood as responding to features of the world, i.e. of real or fictitious but possible situations. When we are looking for a characterization that not only narrates but also evaluates events in a way that contributes to our practical aims, we will thus judge the quality of a given characterization by three criteria: First, a good characterization must correspond to the quality of our evaluative reactions. If the enchanter's *negatively* evaluated behaviour is characterized in a way that would justify a *positive* reaction towards it – like, for example, if we say that he is “caring for the girl” – then it fails to be a plausible characterization. Second, it must also match the strength of our evaluative reactions. To say that the protagonist in Nabokov's novella is “lecherous”, for example, is true but seems to be too weak an expression to characterize the narrated events and explain our reactions towards them. Third, the characterization must match the non-evaluative features of the situation. To say that the

enchanter acts unjustly, for example, would justify the moral reactions that we actually have but it does not fit the situation. To act unjustly would, roughly speaking, involve a distribution of advantages or disadvantages and this is not the context in which the story of the novella is set. When Edmund White, Angela Carter and Dmitri Nabokov describe the behaviour of the protagonist they capture all at once the evaluation, the strength and the context that the case exhibits, and therefore seem convincing.

It is interesting to note that all the descriptions of the novella's events and its protagonist provided by White, Carter and Nabokov try to capture the evaluation, its strength and the features of the situation with a single expression – though not necessarily with a single word. This is interesting because we can describe the case in ways that fulfil the criteria separately. To see this one can look at the summary that I gave at the beginning: ‘A paedophile marries a terminally ill woman in order to obtain custody of her daughter.’ Even if it is hard to imagine that somebody does not share our condemnation of the events described in this sentence, it is logically possible to utter this sentence and insist that there is nothing wrong with the depicted kind of behaviour. The summary given is a purely descriptive characterization of the events and does not imply any form of evaluation. If we say, in contrast, that the paedophile treats the woman *as a means* to marry her daughter, then we can hardly argue that the behaviour is morally impeccable. It would be

confusing to assert both that the enchanter treats the mother as a means and that he does not do anything wrong because the use of the expression ‘to treat somebody as a means’ strongly suggests that we negatively evaluate the agent’s behaviour.[10]

The strength of an evaluation is usually expressed together with a judgement about the evaluation's quality. We often use adverbs to modify the evaluative adjective or verb such as 'very' or 'absolutely', or we use evaluative adjectives that already imply a claim about the strength of our valuation, such as when we assert that a deed was 'terrible', 'abhorrent' or 'horrendous'. It is nevertheless at least theoretically possible to express the strength of an evaluation without saying if the value is positive or negative. This is sometimes the case in natural language when we say that an event was 'extreme', 'tremendous' or 'glaring'. It is also true that we can evaluate an event without suggesting anything about the strength of our evaluation. Both these cases may be relatively rare, but what is important is that a concept may contain information about either the quality or the strength of a value judgement and thereby play a role that differs from the role of a concept that contains information about both issues.

We can furthermore express our evaluation of an event without referring to the situational features of what happened. This can be illustrated by a characterization of the novella with the words ‘The

enchanter treats the mother very badly.' This description obviously also implies a moral evaluation and expresses the conviction that the agent should dispense with this kind of behaviour. But it differs from the charge of treating the mother as a means in that it does not tell us anything about why we react in the way we do and why an agent should avoid the particular behaviour. To call somebody's behaviour 'bad' does *inform* us that there are reasons for indignation, blame and for avoiding the action, but it does not tell us *what these reasons are*. We may call this way of describing events a purely evaluative description.

The phrase 'to treat someone as a means' and other expressions like 'hard-hearted', 'lecherous' and 'unjust' thus have two typical features: First, they imply a moral evaluation - often together with intuitions about the strength of the evaluation - and, second, they provide reasons for the execution or omission of some kind of behaviour.[11] They thereby differ in their explanatory power from two other kinds of descriptions. Purely descriptive characterizations represent the features of the situation, but they do not map our evaluative responses. Purely evaluative descriptions represent our evaluations but they do not point to features of a situation that provide reasons for actions or emotions. Descriptions that contain expressions such as 'treating someone as a means' in contrast refer to our moral responses *and* to the features of the situation *at the same time* and fulfil a double function in common sense discourse.

3. Thick concepts

Expressions with this double function have received considerable attention in moral philosophy and the notions they express are nowadays called ‘thick concepts’. Bernard Williams, who created this label[12], characterizes them as follows:

> “The way these notions are applied is determined by what the world is like (for instance, by how someone has behaved), and yet, at the same time, their application usually involves a certain valuation of the situation, of persons or actions. Moreover, they usually (though not necessarily directly) provide reasons for action.”[13]

This characterization of thick concepts is first of all a characterization of a linguistic phenomenon. It asserts that some expressions of natural languages are peculiar in referring to moral responses and to situational features at the same time. 'Thick concept' is a term of art[14], though, that is not only used to describe a linguistic phenomenon, but is usually accompanied by substantial assumptions about normative values and morality. Philosophers employing the notion of thick concepts usually claim that what is

special about them is not only that they describe and evaluate simultaneously – two tasks that could be fulfilled in principle by two distinct expressions as well. They would furthermore insist that only concepts that play this double role can contribute to our practical aims of explaining our emotional responses and revealing reasons for action. The adherents of thick concepts thus say that it is not a contingent feature of our languages that there are expressions that serve simultaneously to describe and evaluate persons and their behaviour, but rather claim that the linguistic phenomenon reveals an essential feature of our practical and social constitution as human beings. Bernard Williams therefore resolutely rejects the assumption of his teacher Richard Hare, that thick concepts can be expressed by a conjunctive phrase that contains a description of the situational features in the first conjunct and the evaluative verdict in the second, and that these conjunctive phrases can fulfil the same practical task as the original thick concept.[15] If we are left with pure descriptions and "thin", i.e. purely evaluative characterizations, then, Williams argues, our moral statements lose their power to explain and guide us. The theoretical acceptance of thick concepts thus becomes tied to the assumption of their unanalysability.[16]

Many contemporary philosophers remark that the thesis of the unanalysability of thick concepts and the arguments in its favour are difficult to understand and spell out clearly.[17] Nevertheless, I think that we can gain insights from the idea of thick concepts for moral

theorizing even without spelling out a general thesis about their analysability. What seems most important to me is that any attempt to analyse our common sense concepts has to take into account that there is a lot of moral discourse there already.[18] People talk about moral situations and compare different descriptions. They distinguish between more and less fitting characterizations and have an interest in finding the ones that are most able to capture the situation and guide them in explaining their emotions and deciding on courses of action. Evaluative concepts thus play diverse roles in our social practices and moral theory has to take care not to lose sight of the practical role that a concept plays in our social life before adopting it within a theoretical framework.

4. Thick concepts and moral theory

I thus agree with Williams that the acceptance of the linguistic phenomenon that he labelled 'thick concepts' has important implications for moral philosophy. As we have seen from the example of Nabokov's novella, we have a variety of concepts at hand to describe the behaviour of its protagonist. We naturally pick

up concepts like 'hard-hearted', 'treating as a means', 'self-justifying', 'pervert' etc. that describe and evaluate his behaviour at the same time. Compared to this employment of thick concepts, the use of purely evaluative or 'thin concepts' to describe moral situations is quite unusual.[19] Once we become aware of this pervasiveness of thick concepts in our moral discourse we may find it difficult to accept certain widespread forms of moral theorizing:

A common starting point for moral theorizing is to stress the shortcomings of our common sense discourse on moral questions. Many philosophers point to the vagueness and the ambiguities of the moral concepts that we commonly employ and propose an improvement by moral theory. The harshest possible reaction of moral theorists to the observation of common sense's insufficiencies is to deny the importance of our pre-theoretical intuitions for moral theorizing altogether. Peter Singer explicitly draws this conclusion[20] and many other philosophers express at least a general scepticism about the utility of pre-theoretical hunches and concepts.[21] These theorists want to build moral theory on a better ground and usually have in mind empirically justified sciences or very abstract moral principles as an adequate foundation. I cannot argue here at length and do justice to all the complexities and possible defences of such theories, but I want to outline two objections that are related to the idea of thick concepts: First, I find it generally difficult to understand how to start theoretical construction without relying on

pre-theoretical intuitions. Singer and others will, of course, agree that we have to have some convictions in order to begin to argue and will thus try to distinguish between generally reliable and unreliable convictions, calling only the latter ones 'intuitions'. This distinction surely makes sense, but I cannot see why *all* our convictions about moral reasons are condemned to belong to the second class. In addition and more importantly, these theories have a particular problem in justifying the *application* of their abstract principles to particular cases, if they do not make any reference at all to our pre-theoretical moral intuitions and especially to our intuitions about morally relevant reasons. It therefore seems to me that when these theories come to particular cases thick concepts such as 'wellbeing' or 'equal consideration' very often sneak in again.

Secondly, I think that with regard to *these* theories Williams' critique that moral theories unduly demand that agents leave aside all the considerations they consider important is justified:

> 'The model is that I, as theorist, can occupy, if only temporarily and imperfectly, the point of view of the universe, and see everything from the outside, including myself and whatever moral or other dispositions, affections or projects, I may have; and from that outside view, I can assign to them a value. The difficulty is [...] that the moral dispositions, and indeed other loyalties and commitments, have a certain depth or thickness: they cannot simply be regarded, least of all by their possessor, just as devices for

generating actions or states of affairs.'[22]

With regard to our context, Williams can be understood to point here to the problem that theories that deny the relevance of intuitions about our moral reasons for action do not leave the theorist and his readers with the motivational resources to act. But moral theories should be action-guiding and these theories thus fundamentally miss their point.

An alternative to the complete rejection of our moral intuitions seems to be a partial one. According to another widespread account of common sense morality and moral theory, common speakers generally have clear pre-theoretical intuitions about the wrongness and rightness of particular acts or act types, but only very vague ideas about the reasons for their wrongness. This theoretical model therefore retains our intuitions about the rightness and wrongness of particular acts or act types and leaves aside our intuitions about the features of a situation that seem relevant for their moral description. It is then the task of moral theorists to collect these “right-or-wrong”-intuitions about particular cases and spell out the principles that underlie and justify our intuitions. This relationship between common sense morality and moral theory is sometimes illustrated by comparison to the work of grammarians: Speakers of natural languages follow rules of grammar reliably but unconsciously and

grammarians analyse this common usage until they find the underlying rules. Analogously, moral philosophers have the task of detecting the unconscious rules that underlie our moral intuitions about the rightness and wrongness of acts. Although this account is actually opposed to his considered views, John Rawls defends the grammatical account of moral theory in some passages of his work.[23] He only adjusts the picture a little by pointing to the fact that even native speakers of natural languages sometimes deviate from common use. As the use of language is sometimes irregular we cannot expect to find rules that match our common usage perfectly.[24] Rules of grammar are therefore not only descriptive but also normative: They depict widespread use, but they also show us that sometimes we have to correct our own practice. Analogously, in the field of morality we should also expect to find cases where our intuitions do not fit the principles that moral theories have discovered. If the principles are otherwise well established, we should sometimes revise our intuitions instead of changing the principle. Metaphorically speaking, we have to look for a balance between our moral intuitions and our moral principles.

Although this image of the aims and methods of moral theories is rarely explicitly defended it is prevalent in many philosophical accounts.[25] The awareness of the pervasiveness of thick concepts calls this image into question because it reveals that we often react to moral situations with a mixture of evaluative and descriptive

judgements. That is, we not only produce moral verdicts about the rightness and wrongness of acts, but our verdicts usually come together with an intuition about their underlying principle. In this respect our moral intuitions significantly differ from our linguistic ones, as in the case of our use of language we often have no clue about the actual rules that govern it. In addition and even more importantly, in the case of grammar the rules we follow are largely irrelevant for our practical purposes. We want to talk grammatically correctly in order to be understood and not because we care about the features that determine, for example, if we should use a present tense or a present perfect form. We look for the rule to have an epistemic criterion in cases of doubt, but if we already know what form is correct we are not interested in the underlying rules any more. In the case of morality, in contrast, these rules contain the reasons why we do what we do. We seek to do what is morally right because we believe we have good reasons to do so. When we describe a moral situation we do not refer to mere *criteria* for the rightness or wrongness of the behaviour at hand, but look for descriptions that tell us what *reasons* we have for this kind of behaviour. The descriptions we usually give of moral situations usually contain a reference to such reasons in the form of thick concepts. A comparison of moral theory to linguistics is thus misleading.

The biggest problem of the depicted account is not the comparison with linguistics, though, but the supposed possibility of the separation of our intuitions. The account suggests that a moral theorist can say to a test person: 'I am not interested in your reasons, just tell me if it's right or wrong.' But such a demand can often not be satisfied, as we can only tell if an action is right or wrong, if we presuppose that certain situational features are given. Our evaluation of a moral situation is always an evaluation *insofar* as these features are given. There are thus no separable intuitions with the content 'This is right' or 'This is wrong', that can reasonably be taken as data on which to build a moral theory.

As common sense morality deeply involves ideas about the reasons for action, it is not convincing methodology to build up theories that try to split off our intuitions on rightness and wrongness and leave our intuitions about the relevant reasons aside. This is one of the reasons why Williams asserts that moral theory fails to capture our moral discourse and sometimes even undermines confidence in our common morality. He argues that moral theories in general (and utilitarianism in particular) just ask moral agents if a particular act is right or wrong, whereas they should also ask 'what sort of considerations come into finding the answer'[26]. Given the pervasiveness and strength of our intuitions contained in thick concepts it is essential that we take these concepts into account.

All these observations notwithstanding, I would like to resist Williams' conclusion that the whole project of moral theorizing should therefore be abandoned. It is rather *certain forms* of moral theory that must be given up. Moral theory should take our intuitions about the reasons for our moral verdicts seriously. As thick concepts contain the reasons we believe to be morally relevant, these concepts form a good starting point for moral theorizing. But the thick concepts we find in our moral discourse are not infallible guides on how to reason best about performing or avoiding certain forms of behaviour. Our common discussions about how to describe a situation and our ambitions to find a description as fitting as possible actually reveal that our employment of thick concepts is not like operating a repertoire of fixed evaluative labels. When we search for the best description of a case we compare several concepts with each other and look for the one with the strongest explanatory power. I can see no reason why this search should stop with the concepts as we already employ them in everyday discourse.[27]

When we employ thick concepts we do so with practical aims: We want to describe moral situations and explain our moral reactions to them; we argue with others and try to convince them; we want to decide what to do and therefore picture the character of the available options; and we aim to find out for ourselves which values we want to guide our lives. But, like all natural concepts, thick concepts as we find them in everyday moral discourse suffer from various

shortcomings with regard to these aims: They are often ambiguous and vague and their explanatory and inferential connections to other concepts are not clear. In contrast to Williams, I think that these deficits can be dealt with and that our moral thinking on thick concepts can be improved by moral theorizing.

5. Wide reflective equilibrium

Which forms of moral theory can improve our pre-theoretical concepts without discarding their explanatory power? Williams argues that the only form of moral theory that might have a chance to improve our existing moralities would be to spell out what would be the best ethical life for human beings in general.[28] Such a project would have to aim for a convergence of the different thick concepts that we find in different societies by relating them to an objective idea of human nature. According to Williams

> '[The] objective grounding would not bring it about that judgments using those concepts were true or could be known: this was so already. But it would

enable us to recognize that certain of them were the best or most appropriate thick concepts to use.'[29]

This account of a moral theory is characterized by the following features: First, it starts with the thick concepts that we actually find in our societies. Second, it tries to improve the use of these existing concepts by enabling their convergence. Third, a convergence will be enabled, amongst other things, by linking these concepts to other notions, particularly to the concept of human nature. Fourth, such a method will not generate new knowledge, but would improve the way we express and realize this knowledge.

If I focus on these features in Williams' characterization of an at least comprehensible moral theory I cannot help seeing a striking similarity to another account of an ideal moral theory, namely to the idea of a wide reflective equilibrium as presented by John Rawls.[30]

Rawls bases his methodological reflections on the assumption that the members of a society have a shared conception of central moral notions such as a sense of justice, for example. The disposition to employ these notions enables moral agents to render 'judgments on institutions and actions […] *accompanied with supporting reasons*'.[31] Once we assume this capacity, moral philosophy can be roughly understood as an attempt to describe it. But Rawls cautions moral

theorists against supposing that this task may be easily achieved and stresses that the principles to be detected 'must be presumed to have a complex structure, and the concepts involved will require serious study'.[12] Furthermore, the theoretical description of our sense of justice, for example, should not be understood as a mere inventory of our extant intuitions about just behaviour and institutions. Theorizing is understood instead as a creative endeavour that aims to form concepts and accounts that increase the coherence of our moral convictions:

> 'When a person is presented with an intuitively appealing account of his sense of justice […] he may well revise his judgments to conform to its principles even though the theory does not fit his existing judgments exactly. He is especially likely to do this if he can find an explanation for the deviations which undermines his confidence in his original judgments and if the conception presented yields a judgment which he finds he can now accept. From the standpoint of moral philosophy, the best account of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium. […] This state is one reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions.'[13]

Rawls' account presented so far shares some important features with Williams' idea of a feasible moral theory. It can be emphasized in the first place that both insist that 'we begin with judgments about the moral relevance of certain considerations'[34]. They furthermore agree that such considerations have often emerged in a society's concept formation and face us as singular expressions of this society's language. Williams and Rawls can thus be said to be aware of the linguistic phenomenon referred to by the idea of thick concepts and both can be said to attach great importance to these value-laden notions.[35]

Moreover, Williams and Rawls believe that the prevalent use of thick concepts in a society can be carefully improved. Their ideas about the aims and methods of such an improvement differ significantly, but there are still some further structural features that both approaches have in common: For both an improvement of common sense notions can only be a relative one. Theoretical structuring can yield better concepts than were available before, but it cannot lead to an absolute conception, i.e. a comprehensive and unchangeable account whose superiority can be judged independently of the perspective initially taken. The state to be arrived at by moral theory is described by Williams and Rawls as a 'harmonious whole'[36] or a 'wide reflective equilibrium', understood to be transient states that vary with the initial position and with the development of science, technology and culture. A relative stability

of the equilibrium can be obtained, however, by linking the moral concepts to the concepts of other sciences like psychology, sociology or economics, and to other parts of philosophy. But the propositions of these different fields and the moral propositions themselves are not connected solely by inferential relations opening up a hierarchical structure that ends with a small set of axioms. The 'harmonious whole' is rather to be understood as a net with various kinds of explanatory relationships, some of them reciprocal, some of them inferential. According to Williams and Rawls, morality is one section of such a net, but it remains relatively independent in the sense that propositions from some other field do not yield ethical truths directly. This is also true for propositions about the meanings of ethical terms. Both thus dissociate themselves from Richard Hare and emphasize that it is impossible to structure our moral thinking with an analysis of the way we use our moral concepts in common discourse. The analysis should rather be a connective one showing the relations to other concepts and to our judgements in particular cases.

There are, of course, still significant differences in the positions of Williams and Rawls[37], but I hope to have shown that their accounts have more in common than is commonly assumed and is assumed by Rawls and Williams themselves. More important than the historical question about the similarity of these two accounts is the observation that the comparison between them has illustrated that there is not

necessarily a contradiction between taking thick concepts seriously and an engagement in moral theorizing. Both accounts show a way to pay respect to the considered judgements of a society and at the same time aim to improve the conceptual framework that is already there. This way is not a new one. According to John Rawls, it is actually the way pursued by Aristotle, Kant, Sidgwick and many other eminent moral philosophers.

6. Forming the concept of treating people as a means

How can Williams' and Rawls' ideas about moral theory help to improve the short-comings of the common sense concept of 'treating someone as a means'? First of all, they urge us to take any concept seriously that has an intuitive explanatory power. As the example of *The Enchanter* has shown, to say that someone treats another person merely as a means can be a very fitting description of moral situations. The expression accurately captures our repellent feelings and our intuitions about their strength and reasons, so that Williams and Rawls will advise us to give it a place in our moral theory.

I will thus argue in the next chapter that we have a vague but helpful

idea of what it is to treat a person as a means in ordinary language. This idea also has some aspects that are clear and elaborate as can be revealed by an analysis of our employment of the phrase 'to use a person', for example. This kind of analysis is essentially a linguistic one: I will analyse our use of terms and our willingness to substitute them with others. But Williams and Rawls have made us sensitive to the limits of this method. I will accordingly go on to argue that the concept, as we find it, leaves open many important questions that have to answered in order to form the concept into a useful tool for our practical aims.

Linguistic analysis can increase our consciousness about these questions, but it cannot answer them. To improve the working of our conceptual net it will not suffice to analyse its structure, but we have to form our concepts to make them fit. We have to decide which connections to other concepts that we find in common language we want to stress and which we would like to cut off. These decisions aim to retain the strength of our intuitions, but to remove inconsistencies. But our decisions in the process of concept formation will inevitably result in giving up some of our intuitions, even our considered ones. The giving up of intuitions can only be justified by an attractive alternative and such an alternative can only be provided if we connect our concept to independently plausible accounts of related notions. In the following four chapters I will thus examine how other philosophers have tried to improve the thick

concept that we find in common sense. I will focus on the *scope* that the concept has after they have formed it, the *function* it is meant to play in our moral discourse and how they try to *justify* its claims on us.

In the last chapter I will draw conclusions for my own understanding of the idea of treating people merely as means. First, I will present what are, in my eyes, the most important insights that can be gained from the existing accounts of using people that I presented in the previous chapters. Second, I will try to combine these insights and show how, *taken together*, they yield an attractive account of using people integrated into a specific form of moral theory. And finally I want to sketch how the concept formed by moral theory is still connected to the common sense notion and how it manages to play the roles that the concept has in everyday discourse.

There is one more thing we can learn from Williams and Rawls here. They teach us that we cannot expect our analysis to cover all possible cases. No theory can make a claim to completeness, not even completeness about one particular concept. Our theory cannot provide us with a procedure that spits out answers to our questions with regard to particular cases. Many cases will be disputable and we will need good judgement to settle these disputes. But moral theory can, I believe, provide us with a structure to start the discussion.

Notes

1Many of the thoughts I present in this chapter are born out of discussions with a reading group on thick concepts. I am therefore indebted to Holger Baumann, Dominique Künzle and Christian Seidel, who also read and commented on an earlier version of this introduction. I have also profited greatly from reading a hitherto unpublished manuscript by Christian Seidel on thick concepts.

2Dmitri Nabokov, “On a book entitled The Enchanter,” in *The Enchanter*, by Vladimir Nabokov (London: Penguin Classics, 2009), p.74.

3One source of our negative moral reactions is presumably our general aversion to paedophilia. Proceeding from this aversion we may want to say that the enchanter’s behaviour is so repellent because of his paedophiliac inclinations. And without doubt, the crimes done to children and especially those with a sexual component are among the most abhorrent deeds we can think of. But if we think about paedophilia in a narrow medical sense as a psychological disorder in which an adult has 'a persistent or a predominant preference for sexual activity with a prepubescent child or children' (WHO: *ICD-10 Classification of Mental and Behavioural Disorders*) then this disorder by itself cannot account for our moral indignation. Such disorders and their emergence are not voluntary and, with our contemporary medical knowledge, incurable; and involuntary inclinations that are unchangeable cannot be a direct object of moral blame. To be sure, paedophiles cannot follow their inclinations without acting wrongly, but this fact does not give us a reason to blame people suffering from paedophilia but rather a reason to pity them. I will thus exclude the topic of paedophilia in this narrow sense from my discussion of the case.

4Edmund White, “Imagine Lolita as a Nerd” (The New York Times, 19th of October 1986).

5Angela Carter, “Nabokov's nymphet novella” (The Guardian, 9th of January 1987).

6Dmitri Nabokov, “On a book entitled The Enchanter,” in *The Enchanter* (London: Penguin Classics, 2009), p.75.

7Vladimir Nabokov, *The Enchanter* (London: Penguin Classics, 2009), p.20.

8Nabokov, *The Enchanter*. p.16.

9This intuitive explanatory power is granted by many moral philosophers. See, for example, Thomas Hill, “Humanity as an End in Itself,” *Ethics* 91, no. 1 (1980): p.84; Nancy Davis, “Using Persons and Common Sense,” *Ethics* 94, no. 3 (1984): p.387; Onora O'Neill, “Between Consenting Adults,” *Philosophy and Public Affairs* 14, no. 3 (1985): p.252; Shelly Kagan, *The limits of morality* (Oxford: Clarendon Press, 1989), p.131; Thomas Scanlon, *Moral dimensions: permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008), p.89.

10The use of such an expression does not necessarily preclude the judgement that the agent does the right thing, *all things considered*. But it implies a negative judgement *insofar* as the action reveals the feature referred to by our expression.

11'Behaviour’ is not necessarily a single act but should be understood to imply courses of action, plans etc. that comprise bundles or chains of possible actions. So the word ‘generous’ for example may not give me a reason to perform one specific action or even one specific type of action, but it gives me a reason to be a person of a particular kind. And to become such a person some kind of behaviour is necessary.

12Williams adopted the term from Gilbert Ryle and Clifford Geertz who spoke about 'thick descriptions', i.e. descriptions that contain a reference to the intentions and the particular perspective of the agent; see Gilbert Ryle, *Collected papers* (London: Hutchinson and C°, 1971), ch.37; and Clifford Geertz, *The interpretation of cultures - selected essays* (New York, NY: Basic Books, 1973), ch.1. I will argue at a later point that the expression 'to treat someone as a means' is also a thick description in this sense (see ch.VII). But the relation between thick concepts and thick descriptions is not a straightforward one.

13Bernard Williams, *Ethics and the limits of philosophy* (London: Fontana, 1987), pp. 129-130.

14Cf. Simon Blackburn, “Disentangling Disentangling (unpublished manuscript),” 2003, p.2.

15Richard Mervyn Hare, *Moral Thinking - Its Levels, Method, and Point* (Oxford: Clarendon Press, 1988), pp.17-18; and Richard Mervyn Hare, *The Language of Morals* (Oxford: Clarendon Press, 1986), pp.111-126.

16The thesis that thick concepts cannot be analysed into a descriptive and an evaluative component without losing their social function was emphasized first by John McDowell. Cf. John McDowell, “Non-Cognitivims and Rule-Following,” in *Wittgenstein: to Follow a Rule*, ed. Steven H. Holtzman and Christopher M. Leich

(London/Boston/Henley: Routledge & Kegan Paul, 1981), pp.141-162; and John McDowell, “Virtue and Reason,” *The Monist*, 1979. Williams later adopted McDowell's arguments.

17See, for example, Andrew Payne, “A New Account of Thick Concepts,” *Journal of Value Inquiry* 39, no. 1 (2005): 89-103; and Christian Seidel, “Dicke Begriffe (unpublished manuscript),” 2010; Allan Gibbard agrees with McDowell and Williams that thick concepts cannot be analysed in the way Hare proposed, but he offers an alternative kind of analysis, cf. Allan Gibbard, “Morality and Thick Concepts I: Thick Concepts and Warrant for Feelings,” *Proceedings of the Aristotelian Society, Supplementary Volumes* 66 (1992): 267-283; or Allan Gibbard, “Reasons Thin and Thick,” *The Journal of Philosophy* 100, no. 6 (June 2003): 288-304.

18A similar idea can be found in Frank Jackson, *From Metaphysics to Ethics: A Defence of Conceptual Analysis* (Oxford: Clarendon Press, 1998), pp.130-134. Jackson argues in this passage that common sense morality should be understood in analogy to folk psychology. That would involve seeing it as a proto-theory that not only consists of "right-or-wrong" intuitions, but that also contains considered judgements about reasons ('input-clauses'), about relations between moral notions ('internal-role clauses') and about the relation between moral behaviour and human psychology ('output-clauses').

19Brian Barry, *Theories of justice* (Berkeley: University of California Press, 1989), p.264 Holger Baumann plausibly stressed in a discussion that thin concepts might nevertheless have a place in the description of moral situations, namely in those cases where we are confronted with new and hitherto unavailable courses of action like, for example, when we use a new technology or apply an established one in a new context. This observation rightly warns against the upgrading of thick concepts at the expense of thin ones, but it does not undermine the general thesis of thick concepts' prevalence in describing moral situations.

20Peter Singer, “Ethics and Intuitions,” *The Journal of Ethics* 9, no. 4 (2005): p.345; cf. also Jonathan Haidt, “The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment,” *Psychological review*. 108, no. 4 (2001).

21See, for example, Davis, “Using Persons and Common Sense”; R. B. Brandt, “The Science of Man and Wide Reflective Equilibrium,” *Ethics* 100, no. 2 (1990).

22Bernard Williams, *Making Sense of Humanity and Other Philosophical Papers 1982-1993* (Cambridge <etc.>: Cambridge University Press, 1995), p.169.

23See, for example, John Rawls, *A Theory of Justice* (Cambridge, Mass: Belknap Press of Harvard University Press, 2005), p.47; for a detailed argument on why Rawls' linguistic analogy does not match his own methodological account, see: Norman Daniels, “On Some Methods of Ethics and Linguistics,” *Philosophical Studies* 37, no. 1 (1980): p.47.

24Rawls, *A Theory of Justice*, p.49.

25An explicit defence can be found in John Mikhail, “Universal moral grammar: theory, evidence and the future,” *Trends in cognitive sciences.* 11, no. 4 (2007); see also Frances Myrna Kamm, *Morality, Mortality. Vol.1: Death and Whom to Save from It* (New York: Oxford University Press, 1993). Kamm does actually demand that her 'test persons' give their reasons for their 'judgements about the permissibility or impermissibility of certain acts' (p.8), but she supposes that these reasons are unconscious for the most part and that moral theory is needed to 'reveal some underlying psychologically real structure, a structure that was always (unconsciously) part of the thought processes of some people' (ibid.).

26J.J.C. Smart and Bernard Williams, *Utilitarianism for and Against* (London: Cambridge University Press, 1985), p.99.

27This dynamic picture of thick concepts can also be raised against the criticism that thick concepts condemn their users to rather static reactions to particular cases. An example of such criticism can be found in Blackburn, “Disentangling Disentangling (unpublished manuscript),” p.4.

28Williams, *Ethics and the limits of philosophy*, pp.152-155.

29Ibid., p.155. It should be kept in mind that Williams is not presenting this account of moral theory as his own considered position. He is, on the contrary, very clear about his misgivings about it. But for him it is the only feasible moral theory and as I think that moral theorizing is necessary this is where to look for Williams' advice.

30That Williams and Rawls show some similarities in their methodological approach – their substantive disagreements on moral questions notwithstanding – is forcefully argued in some papers by Thomas Scanlon. Cf. Thomas Scanlon, “The Aims and Authority of Moral Theory,” *Oxford Journal of Legal Studies*, 1992; and Thomas Scanlon, “Thickness and Theory,” *The Journal of Philosophy*, 2003; Scanlon's claims are (partly) defended by François Schroeter, “Reflective Equilibrium and Antitheory,” *Noûs* 38, no. 1 (2004).

31See Rawls, *A Theory of Justice*, p.46, my emphasis. Rawls calls the method he is defending here the search for a 'wide reflective equilibrium'. This method is not to be confused with the method characterized before as 'looking for a balance between our moral intuitions and our moral principles'. This latter method is sometimes called a search for a 'narrow reflective equilibrium'; cf. Norman Daniels, “Wide Reflective Equilibrium and Theory Acceptance in Ethics,” *The Journal of Philosophy* 76, no. 5 (1979); and Norman Daniels, “Review: Kamm's Moral Methods,” *Philosophy and Phenomenological Research* 58, no. 4 (1998).

32Rawls, *A Theory of Justice*, p.47.

33Ibid., p.48.

34Scanlon, “The Aims and Authority of Moral Theory,” p.9.

35It may be controversial if Rawls’ example 'just' really expresses a thick concept in Williams' sense. The word is sometimes used as synonymous with 'right' and would then be a thin concept in this usage. Williams himself considers 'just' to be a thick concept, though, if it is applied to a person's character. The word then refers to specific features of an agent's dealing with the world and therefore fulfils the double function that is characteristic of thick concepts. But the same seems to be true of Rawls' specific use of the word 'just' with regard to specific institutions. Accordingly, he calls the notions he is interested in 'substantive moral conceptions'. Cf. also Scanlon, “Thickness and Theory”; and Samuel Scheffler, “Morality Through Thick and Thin,” *The Philosophical Review*, 1987.

36Williams, *Ethics and the limits of philosophy*, p.153.

37Williams and Rawls disagree, for example, on how a moral theory can claim to improve the ethical life of a society. Both do indeed agree that this authority can only be granted to a theory by its addressees, but whereas Rawls thinks that the higher degree of reflection that a moral theory can offer is in itself a reason to adopt it, Williams seems to assume that an agent can only be persuaded to adopt a different set of thick concepts if it is possible to show him that this improved set would lead him to a better life. According to Williams this can only be achieved by an objective account of human nature. Cf. Ibid., p.154 Furthermore, Rawls spells out the concept of justice by offering general principles that take a middle position between our considered judgements about justice and those theoretical accounts. Williams also talks about a room between 'the two extremes of the one very general proposition [about the nature of humans] and the many concrete ones', and says that this room is filled with beliefs 'that would help us to find our way around in a social world' (ibid., p.155). But these beliefs do not have the form of principles but are instead to be understood as conceptions of virtue.

II Using People and Common Sense

1. A concept in use

Let me start my investigation into the common sense concept of using people by imagining the following situation: A young woman is dating a man because she feels old and wants to have a baby soon. After she becomes pregnant she immediately leaves the man. He feels deeply hurt and writes her a letter complaining ‘You were just using me’. The abandoned lover's complaint is certainly familiar to us. Accusations of having been used are an element of our repertoire of morally significant descriptions and are common in everyday discourse. The concept of using people is thus indeed a common sense concept. Furthermore, there are situations, like the one above, where the characterization as a case of using seems most fitting.

There are other moral notions, though, that we use more frequently and with greater consciousness. The concept of a lie, for example, will come quickly to our minds when we think about moral notions. We all know that lying has something to do with not telling the truth, that it is often morally problematic to lie, but that there are also cases such as white lies and benevolent lies where a moral

judgement is more difficult to render. In comparison to the concept of lying, the concept of using a person is less frequent, vaguer in content and generally employed without much awareness of problematic cases. This lack of popular reflection notwithstanding, the concept of using people is a concept in use and its employment is accompanied by relatively stable intuitions that express part of our moral sensibility. It is thus reasonable and intriguing to ask how the concept works in our common discourse.

A first thing to notice about our common use of the concept is that in the description of cases like the one above or the literary example of *The Enchanter* we are not using one single expression to refer to the behaviour at hand. Instead we employ a family of slightly differing phrases. We say, for example, that 'the young woman uses the man' or that 'she treats him as a means' or that 'the mother is a repellent means in the eyes of the enchanter' and that 'the girl is for him an instrument for his gratification'. We also say that 'A regards B as a means' or 'as a tool' and the somewhat technical term 'to instrumentalise' has also found its way into colloquial language, especially into the mass media.[1] All these expressions are often used interchangeably and we jump from one of them to the next without recognizing a change in meaning. The different expressions do carry different connotations, though, and in some contexts not all expressions seem to fit equally well.[2] This feature of the expressions circulating in everyday language can be neatly illustrated by an

example used by Nancy Davis[3]: A beggar takes a cute child with him in order to move the passersby to give more money. While in such a case we are willing to say that the beggar is using the child, it is less clear if he *regards* the child as a mere tool. To decide on the adequacy of this second description we would need further information about his relationship and attitude towards the child. We thus have a couple of different expressions with slightly different meanings to describe the cases we are considering.

The example of the beggar and our reactions to it reveal a further interesting feature of our common sense concept. The decision about which of our expressions is adequate in a specific context depends on the object we are evaluating. Are we talking about one particular act or about a series of actions? Are we talking about an attitude, a current mental state or a behavioural disposition towards another person or group of people? The many expressions we use in everyday discourse can refer to all these different objects. It is also true, however, that some of them seem to be more adequate with regard to one particular kind of object. When we say that a person is *regarded* as a means, as a tool or as an object, we are more likely to be condemning an agent's attitude. If we say, in contrast, that a person *uses* another we are in most cases talking about an act type and not about an attitude. The phrase 'to treat somebody as a means', finally, is the widest possible description and can refer to both groups of objects. The expressions referring to the use of people are

thus ambiguous with regard to whether they express a negative evaluation about an attitude or about an act type.[4]

The expressions we are considering are not only flexible with regard to the objects that can be evaluated by them, they also cover a broad range of possible contexts: The examples chosen so far all come from the context of close interpersonal relationships and this indeed seems to be the paradigmatic field of use for our expressions.[5] These same expressions can be used without bending natural language, though, to characterise very different kinds of interactions as well. Some of the protesters in Tehran in June 2009, for example, complained that they felt like ‘having been used’[6] or ‘taken advantage of’[7] by the Iranian government. Another example[8] is provided by the Japanese singer and political activist Karin Amamiya who condemns Japanese companies and the government for ‘using and dumping’ young workers without stable working contracts.[9] Many more contexts for using people are conceivable and it does not seem exaggerated to say that an instrumental treatment of other people is possible in every field of human interaction.

A further feature of our common sense notion that has to be mentioned is its evaluative character. In the first chapter, I claimed the concept to be a thick concept, i.e. a notion that contains both a descriptive and an evaluative judgement. But even here things seem to be more complicated.[10] Asked to comment about the statement that

'everyone is using everyone' a blogger on the internet made the following comment:

'I think, in some ways we are all using people, but not necessar[il]y in a bad way. We all have friends (or most of us) and we use them to converse with, we use them [as] support. That's what friends are there for. In that way, yes, we all use each other.'[11]

If we accept this blogger's linguistic intuition that we can say that we are using a friend in a good conversation, for example, then we have to accept that not all utterances claiming that a person is used are negatively loaded. This evaluatively neutral use of language can also be seen in catchy book titles such as *Code Leader: Using People, Tools, and Processes to Build Successful Software* or *How Leaders Build Value: Using People, Organization, and Other Intangibles to Get Bottom-Line Results*.[12] We may perhaps disagree with the authors of these books about the evaluation of certain forms of personal management, but their examples illustrate that the expression 'to use people' can be competently employed without an intention to negatively evaluate the behaviour so described. Many philosophers accept the possibility of a neutral use of the expression and would not object to saying, for example, that I use a taxi driver who drives me to work or a postman who delivers my mail.[13] These

philosophers thus have to agree that if the concept of using people is a thick concept it is a fluid one in Blackburn's sense, i.e. it does not generally come with one particular evaluative attitude.[14]

I take these intuitions about a purely descriptive employment of the expression 'to use a person' as relatively clear and reliable data about our common sense notion. Nevertheless, I want to add some qualifications: First of all, even if it sounds semantically impeccable to say that we use our taxi driver or postman, we hesitate to do so. The aforementioned blogger confirms this observation when he/she tells us that 'when I think of the statement "using people", I hold a negative connotation with this word'.[15] Second, while it might be true that we can employ the expression 'to use a person' in a purely descriptive way, it is less clear if we can do so with the other expressions of our family as well. I would still insist, for example, that it would be very confusing to assert both that the enchanter *treats the mother as a means* and that he does nothing wrong. The use of the expression ‘to treat somebody as a means’ strongly suggests, to my mind, that we negatively evaluate the agent’s behaviour. Third, there are cases where we might be in doubt if a description of a case is evaluative because our evaluation is somewhat elusive. Take the following case:

“*Friendly” neighbour:* A young man meets his neighbour, a woman in her 60s, at the supermarket. He offers to carry her bags back home, because he hopes that out of gratitude she will invite him in for a cup of tea and so he will have a chance to meet her attractive daughter.

I think most people would not object to saying that the young man is trying to use his neighbour. He is pursuing a goal and believes the woman to play some role in its achievement. Furthermore, it seems clear to me that we would all agree that the young man is not doing anything terribly wrong. I doubt, nevertheless, that we would be willing to say that his action is without any moral failure. If I imagine alternative courses of action and motivation I cannot help thinking that the young man should help the lady for benevolent motives and try to get close to the girl in other ways. A second example, provided by Thomas Scanlon[16], might help to further clarify this point:

Ballroom: A woman invites her male colleague to the big end-of-the-year dance to associate with “the in crowd” who accept him as a member.

To render a final judgement about the woman's behaviour in this example we certainly would need to have more information about her motives and beliefs and about the previous relationship between her and her colleague. But I suspect that we would agree even without further clarifications that the woman is indeed using her colleague in the usual sense of this expression and that her behaviour is objectionable to some degree or, at the very least, not ideal. I conclude that the expression 'to use a person' sometimes carries an evaluation even in cases where we are sure that the agent is not acting wrongly in a strict moral sense. In such cases there is thus an evaluative element in our describing them as 'a use', although it is a different kind of evaluation from our judging an act to be morally *wrong*. We thus find three modes of evaluation that are linked to the expression 'to use a person' in common sense: In some innocent cases, such as the one with the taxi driver, to say that I use him does not seem to involve a moral evaluation. In a second category of examples, my describing the case as a case of using does involve a strong moral verdict. The third category is made up of cases of using a person that seem objectionable in a way, but not morally wrong in a strict sense.

In examining our common sense notion of using people I have so far stressed the notion's diversity: The notion can be expressed by many different words that differ in connotation; it can be used to evaluate different objects such as actions and attitudes; it can be employed in

diverse contexts and it can be used in descriptive as well as in various evaluative ways. These findings about our common sense notion have led Nancy Davis to the following conclusion:

> 'I am inclined to doubt that our commonsense views about using persons can play an important role in philosophical argument, either in the construction or in the criticism of moral theories. Two considerations underlie this scepticism: first, the things that philosophers have said about using persons do not happily characterize our commonsense notions, and second, a closer look at these notions reveals them to be elusive in important ways, ones that make their philosophical application problematic.'[12]

Davis' way of presenting the conclusion of her paper helps me to spell out the aims of the rest of this chapter, of the chapters to follow and of my book as a whole. Davis' thesis consists of two considerations and a conclusion. Her second consideration about the elusiveness of our common sense concept of using people will be the topic of the next section. Davis' first consideration on the relation between our common sense notions and existing theories will be one of the items to be discussed in the chapters to follow. Davis' conclusion that our common sense notion of using people does not have a role to play in moral theory, is the challenge that runs through this whole book and will be evaluated in its concluding chapter.

2. Too elusive a concept?

Nancy Davis motivates her investigation on the common sense notion of using persons[18] with the following consideration:

> 'If our aim is to do justice to the depth and complexity of commonsense morality (rather than simply formulate a technical notion that rivals, or has no clear engagement with, our commonsense notions), then we must consider a variety of cases.'[19]

With this statement Davis seems to embrace the view that I attributed to Williams and Rawls in the introduction and that I embrace myself, namely that moral theory has to do justice to our existing moral convictions and that this suggests a careful analysis of its important moral notions. But a closer look at Davis' text shows us quite a different approach to common sense morality. Her paper reveals that she does not consider it to be a condition of adequacy for moral theories in general to do justice to common sense morality, but that her interest in the common sense notion is only due to the fact that some rival theories refer to them[20]. Robert Nozick and Charles Fried, for example, employ the common sense notion of

using persons to argue against consequentialism.[21] Davis, who is a consequentialist[22], wants to evaluate these arguments and therefore turns towards common sense to see if the notion she finds there is indeed a threat to her favourite moral theory. Davis herself is quite sceptical in general about whether common sense can help us much in answering important moral questions[23] and she also comes to a negative conclusion with regard to the concept of using persons. This concept cannot be an important notion in moral theorizing, according to Davis, because it is elusive. This elusiveness is twofold: The concept does not have a clear scope, as there are many cases where it is hard to decide if they fall under the concept or not. In addition, the concept does not provide a theoretically valuable justification, because it is already morally loaded:

> 'The appeal to our commonsense views cannot provide us with a neutral or authoritative basis for the assessment or construction of a moral theory, for the classification of a case as one of using involves reference to our views about nature, scope, and value of human interactions.'[24]

At the end of her paper Nancy Davis draws her conclusion with regard to the common sense concept of using persons. She sums up rather carefully:

> 'I have argued that commonsense notions of using persons are subtle and elusive, and I have suggested that their philosophical application has been, and is likely to be, problematic. I have not claimed that moral theorists can get no mileage – positive or critical – out of an appeal to commonsense views about using persons. This […] is an open question, but I am not optimistic about the outcome.'[25]

Although I want to emphasize that Davis' analysis of the common sense concept of using persons reveals many important insights, I do not share her pessimism about its philosophical application. I find her negative conclusion premature and believe that this is ultimately due to a mistaken view of the relation between moral theory and common sense morality. Let me spell out my reservation step by step:

First, Davis stresses at many points in her paper that the common sense concept of using persons does not have a clear-cut scope and that it is 'vague', 'subtle' and 'elusive'. I share Davis' inconclusiveness about the application of the concept in many cases. I am not sure, for example, if I would say that a photographer uses the person he snaps on the street and whose photograph appears in his next exhibition.[26] But the fact that the common sense concept of using persons is vague with regard to many examples does not show that it is not

useful for moral theories. We certainly expect a moral theory to help us in deciding what to do, but moral theories contain many concepts and not every concept must provide us with a decision-procedure. We thus should not judge a common sense concept's quality as a theoretical notion before we have a picture of its actual role in our theory.[27]

The idea of a diversity of conceptual roles in moral theory leads me to a second and more general objection. I find it remarkable that Davis asks if our common sense notion is up to the task it has been assigned to by certain moral theories, but that she does not consider the case where a moral theory fails to capture the role that a concept actually fulfils in common sense. Sometimes it is not the actor but the person who casts the actor who is responsible for a bad performance. A moral theory might thus fall short of convincing us because it does not give our concepts the roles that they can really play. It seems to me that Davis does not consider this possibility because she fails to consider Williams' more general point that common sense notions already have their role. The concepts and beliefs that prevail in a society serve to 'help us find our way in a social world'.[28] This involves a variety of tasks and the diversity of conceptual roles in moral theory simply mirrors the diversity of conceptual roles in common sense morality. Moral theorists have to be aware of these pre-theoretical roles of a concept in order to assign a role to it that fits its conceptual character.

Davis' neglect of the roles that concepts already have when they are applied in common sense seems to be due to a certain picture about the relation between common sense morality and moral theory. This picture can be seen clearly in her argument that our common sense views on using persons cannot be an 'authoritative basis for the assessment or construction of a moral theory' because they already imply moral convictions about the 'nature, scope, and value of human interactions'[29]. She illustrates her argument by pointing out that to decide if a particular interaction is a case of using we sometimes have to know, for example, what can be legitimately expected from a friend. To answer this last question we must have an account of the value of friendship and maybe also of the value of human interactions in general. We thus need a coherent account of not only one, but of several morally important concepts. According to Davis such an account can only be provided by moral theory and if we want to criticise or construct a moral theory we cannot refer to such loaded common sense notions because we would be presupposing what we are trying to achieve. This argument neatly separates two spheres of moral considerations. On the one hand, we have common sense morality consisting of rather scattered intuitions about what is right and wrong and a repertoire of act descriptions that may or may not coincide with morally relevant boundaries. On the other hand we have moral theory as a more or less coherent system of moral beliefs about the principles that determine these

boundaries and show the connections between morally relevant concepts. Moral theory cannot ignore common sense morality altogether and must correspond with a relevant part of its isolated intuitions, but moral theory provides the 'views about the nature, scope, and value of human interactions' and gives answers to 'the most important questions that confront us as serious moral agents', questions that cannot even be 'satisfactorily addressed' in common sense discourse.[30] This portrayal of the relation between common sense morality and moral theory seems wrong to me for several reasons. At this point I only want to stress that it underestimates the coherence of our common sense discourse. To be sure, all our systems of moral beliefs are inconsistent and lack explanations and justifications for many of their convictions. But the moral beliefs that we find are not, in general, isolated intuitions, but webs of concepts and beliefs with many conceptual and explanatory junctions. Davis is therefore right in claiming that our common sense views on using persons do not provide us with a neutral basis on which to build a moral theory. But she is wrong in supposing that there are common sense views that are not equally entrenched in other moral beliefs and that moral theory should and could be built without such views. Davis is likely to respond to my criticism by asking how we can build a theory if we only have concepts that presuppose the existence of a theory. The answer is that a theory is already there. We find such a theory in our common sense discourse

provided by our repertoire of thick concepts. This folk-theory[31] is, to start with, an incomplete and unsatisfying bunch of ideas that can and should be improved in many regards, but it is the only material we have to create a better theory.

3. Deep use

So far I have presented the common sense concept of using persons in all its breadth and I have argued that breadth is not necessarily an obstacle to theoretical application. But focussing on the breadth of a concept can result in us losing sight of the concept's depth. To say it less metaphorically: An analysis of the broad range of uses of a concept can reveal that there are no common rules that govern them all; the diverse uses may be connected more loosely instead by a set of only partly overlapping rules. But this loosely connected set of rules may have subsets that are clear and elaborate. Such subsets of rules may be the rules that govern the use of one particular word or phrase or the rules of application in one particular context. A theory which aims to improve our common sense notion will select from the rules governing the notion and will leave out some of them as

peculiarities of colloquial language. The theory will often be especially interested in the deeper parts of the web of rules and focus on these clearer subsets. The selection of subsets has to be undertaken carefully, though, as by too deliberate a choice one might lose sight of the particular role that the concept in question plays in common sense. One such careful approach to the concepts of common sense is the analysis of *paradigmatic cases*. These are the cases where the notion is most confidently used and it is therefore reasonable to expect that the concept is here employed in its central role and that the employment follows clearly identifiable rules.

The concept of using persons is a concept that not only has diverse uses, i.e. breadth, but also particular applications that are governed by relatively clear and elaborate rules, i.e. depth. To say that the common sense concept of using persons is entirely elusive is therefore exaggerated. To illustrate the concept's depth I want to come back to the example of Nabokov's *Enchanter*, as I consider it to be a paradigmatic case of using a person. By analysing this example and comparing it to other cases I want to highlight the rules that determine the scope of the most common expression 'to use a person'. I will also shed some light on the justifications that are connected to the notion in common sense and, finally, I want to point to some questions that remain open and that must be answered by a refinement by moral theory.

3.1 Using people and using tools

The protagonist of Vladimir Nabokov's novella *The Enchanter* marries a terminally ill woman in order to obtain custody of her daughter after she dies. This strongly repellant behaviour can be characterized fittingly by saying that the enchanter is 'using' the mother. But what do we mean by this expression? The very common verb ‘to use’ can be combined with many different object expressions. We talk of using knives, methods, cars, opportunities, capacities, stones and so on. The most typical use of 'use' is the use of material objects of a medium size, though, objects that were often built to be used such as tools, pens or machines. We are borrowing this expression when we speak about using people and therefore often add further attributes to it like 'as a tool', 'as an object' or 'as an instrument'. It is therefore plausible to analyse the expression 'to use a person' by comparing it with the expression 'to use a tool'. Unsurprisingly both expressions have many features in common. According to my analysis, in order to say that somebody uses a person or a tool three basic conditions have to be fulfilled:

First, I only use a tool if I do something with the tool. If I only look at a hammer or talk about it I do not thereby use it. Similarly I only use a person if I interact with that person. This condition should be

understood to imply that an act of mine has some foreseeable effect on that other person. I have to admit, though, that natural language is rather vague on this point. Imagine the following case:

Helicopter: A helicopter is looking for a place to land. The pilot knows the region to be very muddy. He therefore looks for people strolling around and lands close to where they had been walking.

It is not unnatural to say that the pilot uses the people as points of orientation. But then the example seems to conflict with the first condition as he is not interacting with them in the relevant sense: His action is not likely to affect them in any way. But we can respond to this objection that we in fact do hesitate to say that the pilot *uses* the walkers even if we feel more comfortable saying that he uses them *as points of orientation*. It is in connection with expressions of the form 'as an A' that the interaction condition can be violated. This is a common phenomenon, as becomes clear when we think of using tools. I do not use a knife when I only look at it. But although I’m only looking at it I might use it *as a model* for drawing. Our ambiguous reaction towards examples such as *Helicopter* is thus due to the peculiarities of the expression 'to use something *as something'* and it is not necessary to cover these examples in a definition of the

expression 'to use a person'.[32]

Second, in our interaction we pursue a goal that is not directed towards a state of the tool itself. That is, we do not use a knife if we sharpen it because the sharpness we are aiming at is a state of the knife itself. Similarly, A does *not* use person B if in interacting with him she is ultimately aiming for a state that is supposed to be good or even for a state that is supposed to be bad for B. Consider the following two examples:

Christmas: In December Ron and Jill are doing some shopping. Jill gets enthusiastic about a scarf but doesn't buy it. Half an hour later Ron pretends that he forgot something. But in fact he goes back to the shop and buys the scarf as a Christmas present for Jill.

Insult: A young man on a bicycle rides in the middle of the road thereby preventing a car from overtaking. When the car finally manages to pass the bicycle the car driver opens the window and shouts abuse at the cyclist.

It seems clear to me that we would not speak of someone *using* another person in any of these situations. Ron deceives Jill to realize one of his goals, but as his goal is to make Jill happy we wouldn't

say that Ron uses Jill. In *Insult*, the car driver wants to offend the cyclist, but he does not use him. The reason why we hesitate to speak of using in this case seems to be due to the fact that the driver's act is *directed against* the cyclist. These two points may be taken together by claiming that, for A to use B, A must pursue a goal that *points away* from B.[33] A is then neither acting to bring about a state that is good for B, nor to bring about a state that is bad for her. He is thus not acting for B's sake at all and his end can be spelled out without essentially referring to B.[34]

Third, we only use a tool if we interact with it *because* we believe it to be useful for our purposes. We don't use a hammer for example, if we take it out of the tool box to have more space to look for the screwdriver. In this case the hammer is not useful to us but an obstacle in pursuing our goal. We are also not using a can on the street that we kick away because we are angry. Similarly, A only uses a person B if A believes that B can contribute to his goal. B's presence or participation must play a role in A's plan towards his ends, as the following examples may illustrate:

Pollution: The chemistry company Chisso introduces industrial waste polluted with mercury into the open sea close to the city of Minamata. Approximately 10,000 people are severely harmed.

Assassin: Trevis wants to kill the president. He stands in the crowd and shoots at the open car of the president. He aims badly and would have missed the president if the driver had continued to drive at the same speed. But the driver suddenly slows down and the bullet hits the president.

Chisso interacts with the people of Minamata and pursues a goal that does not refer to these people. It would have been a lot easier for the managers of Chisso, though, to realize their goal without these people. Thus Chisso didn't use them. In *Assassin* the driver's participation is necessary for the success of Trevis' project, but he also doesn't use the driver because the driver's behaviour wasn't part of Trevis' plan.

This analysis gives us a clear picture of the depth of our employment of the expression 'to use a person'. It also fits well with the paradigmatic case of using people that is depicted in Nabokov's novella. The story's paedophile protagonist meets a 12-year-old girl in a park and is immediately fascinated. From this moment on he wants to get close to the girl and comes to the park frequently. By talking to the girl's foster mother he learns about her real mother and acquires the belief that some of her properties, namely her custody rights and her illness, can be helpful in realizing his goal to get close to the girl. He then visits the mother for the first time pretending to

be interested in some of her antique furniture. In accordance with our analysis we can thus say that the enchanter interacts with the mother because he believes that her presence or participation can contribute to the realization of his goal, a goal does not point to her, but to her daughter instead.

It is interesting to look at the case of *The Enchanter* in this analysis, as it helps to distinguish the enchanter's behaviour from other kinds of wrongdoing: The protagonist of Nabokov's short story has no intention of harming the girl's mother. He is not deeply concerned about her wellbeing either, but his actions are not directed against her as the car driver's derogatory words are in *Insult* or as the behaviour of someone who acts out of anger, revenge or jealousy is. This might be one of the reasons why it is not obvious from the start what is wrong with the enchanter's behaviour: Offences like murder and mayhem that come quickly to our minds when we think of moral wrongdoing often point directly to their victims, but the enchanter's behaviour is not like one of these categorized crimes. We also cannot charge him with negligence or indifference to another person's wellbeing. As Nabokov tells us he even, in a certainly limited sense, cares for the mother and tries to make her feel comfortable:

> 'He was unfailingly attentive. He made mooing sounds of consolation and accepted her awkward caresses with concealed hatred […]. Always even-tempered, always self-controlled, he sustained the smooth tone he had assumed from the start, and she was grateful for everything – for the old-fashioned gallantry with which he treated her, the polite form of address that in her estimation gave tenderness a dignified dimension, the way he satisfied her whims, the new radio phonograph, his docile acquiescence to twice changing the nurses who were hired to care for her around the clock.'[35]

To be sure, the enchanter's care and compassion are false and under the surface of his courtesy lie hate and 'ohnmaechtiger zorn' (p.45). But he differs morally from the chemistry company Chisso, for example, that pollutes the ocean without any thought to the consequences for the people living nearby, and he also differs from the priest and the Levite who ignore the injured man lying on the road to Jericho[36]. The enchanter's acts are not better than theirs – he is certainly no benevolent Samaritan either – but they are wrong for different reasons.

The analysis of our common use of the expression 'to use a person' has helped us to see that using persons differs in kind from other moral wrongdoings. We should be aware, however, that the analysis cannot explain *what is wrong with* using persons. The three conditions of my analysis tell us what it means to use a person, but they certainly do not name a property that makes these acts wrong.

There are many cases where using a person – in the sense just defined – is morally innocent: The conditions are, for example, fulfilled when I climb on a friend's back to pick an apple or when I take a taxi to get to work. In both cases I'm interacting with another person believing that this person's presence or participation can help me to realize a goal that does not point to this person. But in such cases I'm usually not doing anything morally objectionable. A further look at *The Enchanter* and our common sense discourse can help us, however, to say something more about a possible justification for the wrongness of certain forms of using people. I will argue that there is one justification available in common sense discourse that is philosophically interesting and that at the same time fits well with the analysis of 'using a person' that I presented above. Furthermore, I want to reject another justification that seems to be part of common sense discourse, but that is – as I will argue – less central to it than it might appear.

3.2 To feel used

Let me start the search for a common sense justification of the wrongness of using people by ruling out one that suggests itself. Nancy Davis reminds us of it:

> 'When we are asked to think of a case of using, what generally comes to mind are cases in which the Controller [i.e. the person who uses the other] is both exploitative and narrowly self-seeking.'[37]

Dmitri Nabokov seems to have something similar in mind when he says that the enchanter regards the girl as 'an instrument *for his gratification*'[38] and thus points to his egoistical motives. The enchanter is indeed looking for a possibility to satisfy his paedophiliac desires throughout the whole story and it sounds convincing to say that it is this self-seeking attitude that renders his actions so horrendous. But we have several reasons to doubt this route of justification. To be able to evaluate it better we have to clarify first what can be meant by the word 'self-seeking'. Nabokov's alternative expression 'gratification' suggests that we criticise the agent's end in interacting with others because it is directed solely

towards his own pleasure. This criticism can be understood to condemn the *content* of the enchanter's end and Nabokov would then criticise the paedophiliac desires of the story's protagonist. This criticism is a peculiarity of the example, though, and the charge of self-seeking motives does not generally refer to specific motivational contents. The charge should thus better be understood to be about the *form* of the pursued ends, i.e. about their self-regarding character.

To criticise an action or an agent as narrowly self-seeking cannot simply mean that she is motivated by her own desires or interests. Most people are most of the time motivated by such self-regarding motives and while this may be a reason to lament the world's pitiful condition, it is not an adequate reason to criticise one particular course of action. The objection to the enchanter's motivation is thus not only that he is longing to satisfy his private desires, but also that he is trying to do so 'narrowly', i.e. without further thought about the wishes and interests of other people. This objection sounds convincing at first glance, but it is again dependent on a peculiarity of the example: We can easily change the setting of the story a little and imagine that the enchanter is really trying to get close to the girl, because he wants to present her to his paedophiliac brother. But this change in the motivational structure of the agent does not render his action permissible. In many cases our indignation about one person using another will be the same or only slightly reduced if the agent's

aims are not for his own benefit but for the benefit of people dear to him. Their wrongness therefore does not depend on the motives being self-seeking in a narrow sense.[39]

We can then try to state the objection more precisely: The problem in interacting with somebody in a narrowly self-seeking manner is not that the agent's ends are not for the benefit of *any* person other than himself, but that they are not for the benefit *of his interaction partner*. This interaction partner helps the agent in achieving his ends and so we may expect him or her to profit as well. Interactions that benefit only one of the interacting parties and that are also intended by the profiting party to have this one-sided outcome seem to be 'exploitative' and to be wrong for this reason.

This new objection loses its plausibility with regard to the Enchanter Case, though, when we remember that the enchanter is indeed caring for the mother. It does not seem right to say that he is exploiting the mother in that she does not profit enough from their interaction. He wants her to feel comfortable and she actually seems to die more happily than she would have without their marriage. She also ensures that the marriage is to her advantage by checking his bank account, for example (p.27f.). Having this paradigmatic case in mind I am therefore not convinced by the justifications for the wrongness of using persons that point to its self-seeking or exploitative nature.

Nancy Davis and others will respond to my rejection of this

particular justification by saying that even if my arguments are right I am already abandoning the common sense understanding of what it means to 'use a person'. The common sense notion is, according to these critics, too closely connected to the condemnation of egoistical motives to leave this justification out of its analysis. This close connection seems to be apparent in expressions such as 'to become a means to *somebody else's* ends', 'she regards him as a tool for *her* pleasure' etc. But I think we can and should read these common expressions in a different way. The indignation that is usually contained in such utterances is not, from my point of view, due to the fact that the agent is looking *for his own happiness*. Rather I think that the ends a person is pursuing in using another person are problematically *his* ends in another sense. If we say that one person uses another person as a means to his ends, we can be understood to mean that these ends are his and not the other person's ends because they *point away* from the person he is interacting with. If he uses the other person, it follows by definition that he is not interacting with the other person for her sake, but for the sake of something else. This something *can* be his own pleasure, but it might also be the pleasure or harm of a third party. We thus don't need to read the expression 'his ends' as referring to egoistical ends – although they will be egoistical in many cases – but we can also understand these ends to be 'his own' ends in the sense that they are not related to the person with whom he is interacting.

The idea of an intention that points away from the interaction partner is not only a grammatical peculiarity of the term 'to use a person'. It is closely connected to a particular sensation that we can express by saying that we *feel used*. I have argued above that the woman in Nabokov's novella, for example, cannot complain that she has been exploited or treated without any care for her wellbeing. But she certainly has good reasons to feel hurt by the enchanter's behaviour and she can neatly express her negative sensations by complaining that she feels used. What do we mean by this common expression?

A speaker who uses the words 'I feel used' usually tries to explain the wrongness of the behaviour towards him by pointing to an unpleasant feeling. This feeling differs in kind from other unpleasant sensations such as pain, sadness or fear. It typically combines elements of anger, frustration and a feeling of degradation. First of all, we often hold a grudge against our users. We always hold them responsible for their behaviour and believe that they could and should have acted otherwise. Our feeling is thus a moral feeling that contains an element of anger or indignation. A second feature of the feeling can be illustrated by the example that I presented at the beginning of this chapter. The young man who was dumped by the woman after she became pregnant could have specified his feelings by saying: 'I thought it was love, but I found out that I had only been used'. He thus points to a state or relation he considers to be especially valuable and argues that reality disappointingly did not

come up to this ideal. He is therefore likely to feel frustrated and disappointed about how things turned out. This element of feeling used is typically expressed by a sighing or angry utterance of 'She did not mean me!'. The abandoned lover will feel that the woman did interact with him because of his potential as a genitor and not because he is the person he is.[40] He thereby notices that her intention is pointing away from him and this causes him to feel frustrated. The act of having been used feels furthermore like a special kind of degradation. A person that was used often feels like she has been treated in a way that may be appropriate for entities of lower rank, but that is not appropriate to her rank. People therefore say things like 'I am not *just* your tool' or 'Don't treat me like a *mere* object!'.[41]

This analysis of the sensation of feeling used provides us with a possible justification for our indignation about using people. To feel used is to feel an unpleasant mixture of anger, frustration and degradation that arises when we are not treated as the persons we are. We seem to have strong reasons to avoid any behaviour that would arouse this feeling in other people.

4. Open questions

In the preceding section I analysed the two expressions 'to use a person' and 'to feel used' to illustrate that the common sense notion of using people is not only broad but also deep. But some significant problems remain. Let me highlight four of them:

1. The analysis of the most common expression 'to use a person' has shown that it is exaggerated to say that the notion is elusive through and through. Its employment is governed by quite clear rules that define a class of actions that is easily distinguishable from insults and other acts that are directed against a person, from negligence and ignorance as well as from paternalistic treatment. Not all acts that fall under this definition are impermissible, though. I also use a taxi driver, according to this definition, if I climb into his car and he gets me to work, for example. The common sense notion therefore does not provide a criterion to distinguish permissible and impermissible uses. But we certainly have to know when I act wrongly in using a person.

2. Another question about the common sense concept of using people is imposed on us by *The Enchanter*: Until now I have only spoken about the enchanter using the mother, but Dmitri Nabokov told us that the woman is a repellent means to the enchanter and the

girl an instrument for his gratification. He therefore condemns the enchanter's behaviour towards the girl as well. But does the enchanter commit the same fault with regard to both mother and daughter? Or if both wrongs are different, are they somehow interrelated as Nabokov's quotation suggests?

3. We have also seen that some of the expressions that refer to the concept of using people are employed in common sense both to evaluate acts and attitudes. This raises the question of how and why one single concept fulfils both of these tasks. Is it a mere accident and misleading feature of natural language that it contains expressions that are ambivalent with regard to their moral function? Or is there an underlying rationale in employing the same expressions in both these roles?

4. We can surely agree that it is an unpleasant sensation to feel used and that we should avoid this feeling if we can. But some people may feel used without good reason. Such people may have misunderstood the behaviour of their presumed users or they may have a pathological need for gestures of recognition that makes them feel used without any reason at all. If we are looking for a justification of our indignation about using people we thus need to know when we are *justified* in having this feeling. Moreover, we need to know what follows from the fact that the feeling is indeed justified. Can we make claims on another person to change his

behaviour, for example? This is certainly the case when the protagonist of *The Enchanter* uses the mother of the girl he desires. But in some cases we may feel used because we hoped that some other person loves us and find out that she needed someone to discuss her problems. This hope for love does not seem to justify a claim on that person under all circumstances. What then justifies our feeling used? And what can we reasonably expect from another person when we feel this peculiar sensation?

The first two of these questions are about the *scope* of the concept of using people and ask what acts fall under the intuitively convincing claim that it is wrong to use people. The third question asks about the *role* that this prohibition plays. The fourth question, finally, concerns the *justification* that we have for the claim that it is wrong to use people. These questions together will help us, I believe, to evaluate the theoretical accounts of using people to be examined in the following chapters. I will therefore present them by asking how they think about the scope, the role and the justification of the prohibition to use people and by highlighting the solutions they propose to these systematic problems.

Notes

1As a footnote one could mention that the verb 'to instrumentalise' is not often used with regard to particular individuals, but more frequently with regard to abstract objects. Newspapers speak about the instrumentalisation of 'religion in politics', of 'people's patriotic feelings', or of 'the disorder in a country', for example. All these instrumentalisations involve the use of persons, though, and can thus be counted as falling under the same concept.

2Cf. Nancy Davis, “Using Persons and Common Sense,” *Ethics* 94, no. 3 (1984): p.388.

3Ibid., p.395.

4Cf. Ibid., p.392.

5Cf. Davis, “Using Persons and Common Sense,” p.387; Larry Blum, “Deceiving, Hurting and Using,” in *Philosophy and Personal Relations*, ed. Alan Montefiore (London: Routledge & Kegan Paul, 1973), 34-61; Onora O'Neill, “Between Consenting Adults,” *Philosophy and Public Affairs* 14, no. 3 (1985): p.387.

6Cameron Abadi, “Auf Familie Hosseini kommt es an” (Die Zeit, June 18, 2009).

7Cameron Abadi, “Tehranis riot, claiming flawed poll result” (The Global Post, June 13, 2009).

8Lisette Gebhardt, “Die Rettung Japans” (Neue Zürcher Zeitung, June 12, 2009).

9These examples are not only interesting because they illustrate further contexts of using people, but also because they show that there are expressions that refer to similar ideas not only in English or other European languages such as German and French, but also in genetically and culturally unrelated languages like Persian and Japanese.

10Cf. Davis, “Using Persons and Common Sense,” p.390-391, fn.11.

11“CollegeNET Forum - Using People,” April 21, 2008, http://www.collegenet.com/elect/app/app?service=external/Forum&sp=13445; accessed on 16th June 2010.

12Dave Ulrich and Norman Smallwood, *How Leaders Build Value: Using People, Organization, and Other Intangibles to Get Bottom-Line Results* (Wiley, 2006); Patrick Cauldwell, *Code Leader: Using People, Tools, and Processes to Build Successful Software* (Wrox, 2008).

13Cf. William David Ross, *Kant's Ethical Theory - A Commentary on the Grundlegung zur Metaphysik der Sitten* (Oxford: Clarendon Press, 1969), p.49; H.J. Paton, *The Categorical Imperative - A Study in Kant's Moral Philosophy* (Chicago, Ill: University of Chicago Press, 1948), p.165; Samuel Kerstein, "Treating Others Merely as Means," *Utilitas* 21, no. 2 (2009): p.166; Derek Parfit, "On what matters - unpublished manuscript" (July 2009): p.166.

14Simon Blackburn, "Morality and Thick Concepts II: Through Thick and Thin," *66*, 1992, p.296; cf. also Jonathan Dancy, "In Defense of Thick Concepts," *Midwest Studies in Philosophy*, 1995, p.265.

15"CollegeNET Forum - Using People" This position is actually still compatible with the one of Blackburn, who tries to show that evaluation is part of the pragmatics and not of the semantics of most so-called thick concepts.

16Thomas Scanlon, *Moral dimensions: permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008), p.115.

17Davis, "Using Persons and Common Sense," p.388-389.

18As long as we consider the common sense notion neither Davis nor I distinguish between using *people* and using *persons*. It can, of course, be helpful to distinguish between both expressions, but to my mind no such distinction is part of our common sense notion.

19Ibid., p.395.

20Ibid., p.388.

21Cf. Charles Fried, *Right and Wrong* (Cambridge, Mass: Harvard University Press, 1978); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp.28-33.

22Cf. also Nancy Davis, "Contemporary Deontology," in *A Companion to Ethics*, ed. Peter Singer (Oxford: Blackwell, 1991).

23Davis, "Using Persons and Common Sense," p.406.

24Ibid., p.405.

25Ibid., pp.405-406.

26Cf. Ibid., p.395, fn.16.

27Davis could reply, of course, that she is not trying to say anything about the role that the concept of using persons can play in any theory, but only about the role that it actually plays in the theories of Nozick and Fried. This reply would not fit many of her own remarks, though, as she denies our concept 'an important role in philosophical argument' generally and not only relative to the theories she is examining. Besides I am inclined to doubt that she correctly captures the role that the concept of using persons has in Nozick's and Fried's theories. For both of them the concept serves to describe the structure that any feasible moral theory as a whole must have – that it must include side-constraints, for example – and is only part of a derivation of concrete duties and prohibitions. The vagueness of the concept is thus not something that worries Nozick and Fried too much, as they show by admitting it right from the start. See, for example, Nozick, *Anarchy, State, and Utopia*, p.32; and Fried, *Right and Wrong*, p.29.

28Bernard Williams, *Ethics and the limits of philosophy* (London: Fontana, 1987), p.155.

29Davis, “Using Persons and Common Sense,” p.405.

30Ibid.

31Cf. Frank Jackson, *From Metaphysics to Ethics: A Defence of Conceptual Analysis* (Oxford: Clarendon Press, 1998), pp.130-134.

32This deliberate omission of certain uses of our expression illustrates that my analysis of natural language is already selective. I cannot claim to show natural language just as it is. But I think that any interesting analysis has to proceed in this way and that I operate close enough to its common use that I can claim to still be presenting our common sense concept.

33I am borrowing this expression from Norvin Richards, “Using People,” *Mind* 87, no. 1 (1978): p.99.

34For the idea of essential reference, see John Perry, “The Problem of the Essential Indexical,” *Nous*, 1979.

35Vladimir Nabokov, *The Enchanter* (London: Penguin Classics, 2009), p.33.

36Cf. Luke 10,25-37.

37Davis, “Using Persons and Common Sense,” p.401.

38Dmitri Nabokov, “On a book entitled The Enchanter,” in *The Enchanter*, by Vladimir Nabokov (London: Penguin Classics, 2009), p.75, my emphasis.

39Cf. Thomas Hill, “Humanity as an End in Itself,” *Ethics* 91, no. 1 (1980): p.88.

40That this wish is part of the common sense concept of using people was also mentioned by Ibid.

41If a person degrades me, he does so with the intention to create a feeling of degradation. But the feeling of degradation can arise even without anybody intentionally degrading me. I can feel that being persistently ignored by someone degrades me, for example. If somebody uses me, then the degradation is always of this unintentional kind, because if someone wants to degrade *me*, then his intention points to me and the conditions for employing the expression 'to use' are not fulfilled.

III Kant's Account of Using People

The first attempt to theoretically form the concept of treating someone as a means was made by Kant.[1] He did not invent the notion, though. The German expression for using people – 'jemanden gebrauchen' – was already established at Kant's time and had a negative moral connotation in certain contexts.[2] Kant took up this concept and gave it a central position in his moral theory by using it to spell out one version of the Categorical Imperative, his famous Formula of Humanity: ‘So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.’[3] Almost all existing analyses of the notion of treating people as means refer at some point to this formula.[4]

In spite of the importance of the concept of using people as means for Kant's theory he does not offer a careful analysis. It may be partly due to this fact that Kant's Formula of Humanity was not much appreciated by many moral philosophers. W.D. Ross, for example, passes the judgement that the second formulation of the categorical imperative is an embarrassment to Kant's genius[5]. Kant's moral theory was therefore often identified with his Formula of Universal Law instead. This assessment changed with the resurgence

of Kantian philosophy at the end of the 1970s in Anglo-American philosophy and nowadays many philosophers inspired by Kant even prefer the Formula of Humanity and rely on Kant's account of using people.

Contemporary commentators still complain about Kant's scarce remarks on this central notion, though, and try to build their interpretations and elaborations on very few passages.[6] Kant does indeed refer to the concept at many points in his works and certainly not only in the passages usually quoted. It is nevertheless true that compared to his account of duty or his theory of moral motivation, for example, Kant is stingy with his remarks on treating people as means. He does not offer a comprehensive account and some of his remarks even seem to contradict each other. In what follows I will therefore neither try to construe a theoretical account out of these references, nor will I attempt to shed light on exegetical details. Instead I present Kant's remarks on using people as a background for the systematic questions discussed in this book, i.e. I will analyse what Kant had to say about the scope, the role and the justification of the prohibition against using people. No contemporary account of using people can ignore Kant's ideas because, on the one hand, almost all existing accounts are inspired by Kant and claim to represent his ideas. On the other hand, Kant's work certainly contains some of the most important insights into the topic. I am actually no exception in believing that my own account is

compatible with Kant's ideas and can be understood as spelling out what Kant hinted at. I will not defend this claim, though, and will instead present Kant merely as a source of inspiration for my own and for the other accounts of using people that I present in this book.

1. The scope of Kant's prohibition

Although Kant does not give us a list of examples or a procedure to decide whether person A is merely using person B, we can get a rather clear picture of the scope of Kant's account by looking at the passages where Kant applies the concept. There are, actually, quite a lot of them. Allen Wood points to the fact that, contrary to an alleged vagueness of the Formula of Humanity, Kant uses it quite often and even more often than his other Formulas to show the wrongness of particular act types. Wood counts 14 such instances in the *Metaphysics of Morals* alone.[7] Samuel Kerstein is more cautious in his count, but agrees that Kant frequently applies the Formula.[8] One has to keep in mind, though, that the Formula of Humanity is a complex principle containing several richly loaded notions. The concept of treating someone merely as a means is just one of them,

so one must check the instances that Wood and Kerstein counted and other such passages to see if they involve a reference to the concept of treating someone merely as means or if they hinge on other notions of the Formula of Humanity.

As we have seen before, there is not only the phrase 'to treat someone as a means'; we also have a number of expressions in our common discourse that refer to a similar kind of moral phenomenon. We say that ‘A uses person B’, or that she ‘regards him as a means’ or that she ‘treats him as a mere tool’. Kant is actually not much stricter in his use of words. While in his Formula of Humanity he warns us 'never to use humanity merely as a means', at other points in his works he criticises 'to merely make use of people', 'to treat them merely as means' or 'to estimate them merely as means'[9] without distinguishing between these diverse wordings. Kant's terminology thus shares an ambiguity with our common sense discourse in that it leaves open if he is talking about an attitude or an act type. While the phrases 'to use humanity' or to 'make use of people' seem to refer to a class of acts, 'to regard' or 'to estimate someone merely as a means' sounds like a description of someone's attitude towards other people.

1.1 Using oneself

Kant actually introduces a new ambiguity by making up the expression 'to use *humanity*'. More specifically, he says in the Formula of Humanity that one should never merely use humanity 'whether in your own person or in the person of any other'. This wording illustrates that, in contrast to our common sense understanding of treating someone as a means[10], Kant assumes that this 'someone' can also be the agent herself. I thus cannot only use other people in a morally illegitimate way but also myself. It is important to notice that this widening of the concept of treating people merely as means is not an eccentric idea of Kant that can be ignored in examining his moral theory. Kant insists that it is actually such duties to oneself that are at the heart of morality.[11]

The idea of people using themselves is maybe most plausible when we think about using our own bodies. Like we say that someone uses a knife to cut a piece of wood, we speak about using one's hands to grab something. We can make mistakes in using a knife and we can even make moral mistakes, like, for example, when we use the knife in a careless way that is likely to destroy the knife or endanger people nearby. One might therefore suggest that Kant has something similar in mind with regard to the use of one's body parts.

Kant does indeed think that some uses of our own bodies or its parts are morally wrong and he lists several cases where a person is making a morally illegitimate use of his own body:

> 'Unnatürlich heißt eine Wohllust, wenn der Mensch dazu nicht durch den wirklichen Gegenstand, sondern durch die Einbildung von demselben, also zweckwidrig, ihn sich selbst schaffend, gereizt wird. [...] Daß ein solcher naturwidrige Gebrauch (also Mißbrauch) seiner Geschlechtseigenschaft eine und zwar der Sittlichkeit im höchsten Grad widerstreitende Verletzung der Pflicht wider sich selbst sei, fällt jedem zugleich mit dem Gedanken von demselben sofort auf […] Der Beweisgrund liegt freilich darin, daß der Mensch seine Persönlichkeit dadurch (wegwerfend) aufgiebt, indem er sich blos zum Mittel der Befriedigung thierischer Triebe braucht.'[12]

Kant shrinks from giving a name to the misbehaviour he is describing in this passage, but it is clear that he is condemning all sorts of masturbation[13] and believes that this a case of merely using oneself. Suicide committed for certain reasons[14] is another example of treating one's body in a way that implies that one thereby uses oneself as a mere means:

> 'Das Subject der Sittlichkeit in seiner eigenen Person zernichten, ist eben so viel, als die Sittlichkeit selbst ihrer Existenz nach, so viel an ihm ist, aus der Welt vertilgen, welche doch Zweck an sich selbst ist; mithin über sich als bloßes Mittel zu ihm beliebigen Zweck zu disponiren, heißt die Menschheit in seiner Person (*homo noumenon*) abwürdigen, der doch der Mensch (*homo phaenomenon*) zur Erhaltung anvertrauet war.'[15]

In this passage Kant employs the concept of using a person merely as a means to show the wrongness of many forms of suicide and of what he calls 'partial suicide', i.e. the excision of body parts for commercial purposes. Like the examples discussed before, these forms of killing oneself are also violations of a 'duty towards oneself as an animal'[16], i.e. as a bodily being. But whereas the former example involves a maltreatment of bodily parts, suicides are cases of treating the whole organism in an objectionable way.

If we look at these examples we can see that Kant's account of merely using oneself does not simply proceed from the common sense idea that tools – including one's hands, feet, legs etc. – can be used in an objectionable way. The way one uses a knife – or one's legs in kicking a ball, for example – can be morally wrong because it endangers other people or destroys something that is of value to them. Merely using one's own body in Kant's sense, in contrast, is a wrong done by me, with me and to me. It thus differs from the common sense notion in at least two ways: First, while in the case

of masturbation it may be still plausible to say that a person uses herself *by using* a part of her body, people who kill themselves or give away parts of their body cannot be said to *use* their bodies or its parts because they actually try to get rid of them. Second, if I commit suicide, for example, I am doing something with my body that leads to its extinction. The moral problem of this behaviour is not that I may thereby harm other people like my relatives or my fellow citizens[17]. According to Kant, I am rather wronging *myself* in doing so. It seems to me that the idea of using oneself that is characterized by these two features is unfamiliar to common sense morality and presents a significant extension of the thick concept widely used in everyday discourse.

Besides violations of duties towards oneself *as a bodily creature* Kant also discusses cases of merely using oneself *as a moral being*:

> 'Der Mensch als moralisches Wesen (*homo noumenon*) kann sich selbst als physisches Wesen (*homo phaenomenon*) nicht als bloßes Mittel (Sprachmaschine) brauchen, das an den inneren Zweck (der Gedankenmittheilung) nicht gebunden wäre, sondern ist an die Bedingung der Übereinstimmung mit der Erklärung (*declaratio*) des ersteren gebunden und gegen sich selbst zur Wahrhaftigkeit verpflichtet.'[18]

In this passage Kant is talking about lying, but not about lying to others but about lying to oneself, a wrong that Kant calls an 'inner lie'. An agent who commits this kind of self-deception is, according to Kant, also using himself merely as a means.

1.2 Using others

Peculiar though it is, Kant's account of using oneself can help us to determine the scope of Kant's prohibition against using other people as well. The relation between both classes of duties becomes clear when we consider that what others can permissibly do to us depends in many cases on our allowing it. In these cases we have a right that others do not perform certain actions, but we can waive this right and legitimize the actions if we want to. The idea of waiving one's right to be treated in a certain way cannot be applied to cases of merely using oneself, though. If my practical rationality tells me that I am not allowed to kill myself out of self-love, for example, then I am not justified in releasing myself from this duty. But this implies that neither am I justified in releasing anybody else from his duty not to kill me.[19] We thus see that the

scope of the prohibition against using myself merely as a means is linked to the scope of the prohibition against using others in this way. If I am not allowed to kill or mutilate myself for certain reasons or to lie to myself or to humiliate myself then nobody else is. Kant thus argues, for example, that the 'outer lie', the lie to others is also a way of treating them merely as a means:

> '[…] Was die nothwendige oder schuldige Pflicht gegen andere betrifft, so wird der, so ein lügenhaftes Versprechen gegen andere zu thun im Sinne hat, sofort einsehen, daß er sich eines andern Menschen bloß als Mittels bedienen will, ohne daß dieser zugleich den Zweck in sich enthalte.'[20]

This consideration shows that some duties to oneself, like the prohibition of inner lies, have a correspondent duty towards others, like the prohibition of outer lies. Two such corresponding duties have a common rationale: To present something as true that one believes to be false, for example, is a mere use of the capacity to form beliefs and thus a wronging of the will. This provides us with a strong reason not to commit such an act, no matter whether the person I try to persuade is another person or myself.[21] A similar argument with regard to mutilations is hinted at when Kant remarks in an aside that 'he who destroys another's limbs thereby makes use of humanity as he wishes'[22]. We even find a correspondent duty to

masturbation: Kant thinks that sex is generally a use of another person's genitals and as such something that is objectionable. In contrast to the use of one's own sexual organs, sex with others can be legitimized if the two partners sign a contract that would concede the right to the use of one's sexual organs reciprocally and exclusively to the other, i.e. if they marry. But if two people have sex outside such a contractual framework they would be using each other as they subjugate their rational capacities to their animal pleasures.[23]

These considerations suggest that Kant would probably be willing to apply his account of mere use to cases where he did not explicitly do so. If we find a duty to others that corresponds to a duty to myself that Kant explicitly describes as a case of mere use, we can assume that Kant would justify the duty to others with the concept of mere use as well. The prohibition of murder, for example, seems to be a duty corresponding to the prohibition of suicide and Kant would probably agree that a murderer would 'dispose of his victim as a mere means to his arbitrary ends'.

Besides the duties to others that have a corresponding duty to oneself, Kant assumes that we can treat other people merely as a means in cases where no such relation to self-regarding duties exists:

> 'Deutlicher fällt dieser Widerstreit gegen das Princip anderer Menschen in die Augen, wenn man Beispiele von Angriffen auf Freiheit und Eigenthum anderer herbeizieht. Denn da leuchtet klar ein, daß der Übertreter der Rechte der Menschen, sich der Person anderer bloß als Mittel zu bedienen, gesonnen sei, ohne in Betracht zu ziehen, daß sie als vernünftige Wesen jederzeit zugleich als Zwecke, d.i. nur als solche, die von eben derselben Handlung auch in sich den Zweck müssen enthalten können, geschätzt werden sollen.'[24]

It is obvious that I can violate another's person's freedom and property in ways in which I cannot violate my own freedom and property. We may think of robbery, misappropriation, coercion and fraud, for example. As Kant describes some such offences as cases of merely using this person, we see that there are cases of merely using others that have no corresponding violation of a duty towards myself.

If we accept this extrapolation of Kant's examples, we arrive at a large class of duties that fall under Kant's concept of using people merely as a means. Suicide, murder, masturbation, extra-marital sex, self-deception, lying, organ donation, mutilation, theft, coercion and fraud, all fall under its scope. Kant's account thus comprises many more duties than the common sense concept. It adds violations of duties to oneself, but also cases of wronging others that point directly against them such as murder and mutilation. Kant therefore cannot refer to the analysis of the

common expression 'to use a person' that I presented in the previous chapter in order show what all the duties he mentions have in common. He offers us a different criterion, though, that does not refer to the specific context of interaction, but to the form.

1.3 Perfect duties

Kant's moral theory groups duties according to different criteria. It will be instructive to see if any of these groupings matches Kant's peculiar application of the concept of mere use. It is actually rather complicated to gather a coherent system of duties from Kant's many scattered remarks on features of duties that may be relevant to their classification. Any attempt to reconstruct this system must interpret some of these remarks as misguided deviations from the essential structure. It seems possible, nevertheless, to find a place for Kant's notion of mere use in his attempts at classification. A first hint to this place is given in Kant's employment of the phrase 'to use humanity merely as means' in his famous Formula of Humanity:

> ‘So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.’[25]

It is generally agreed that Kant’s Formula can be divided into two parts[26]: The *command* to treat humanity as an end in itself and the *prohibition* against using humanity merely as means. It is furthermore undisputed that, according to the Formula, the first command is more demanding and implies the prohibition, so that we cannot violate the prohibition as long as we obey the command. But then the prohibition seems redundant. It seems that the Imperative could be reformulated in the following way without any loss of meaning: ‘So act that you always treat humanity as an end.’[27] What role then is left for the prohibition to play? According to a plausible interpretation of the prohibition’s role in the Formula of Humanity, Kant needs it to express the distinction between necessary and contingent duties. This distinction runs parallel to the more famous distinction between perfect and imperfect duties introduced with regard to the Formula of Natural Law some pages before in the *Groundwork*. In the earlier passage Kant offers two criteria to test the permissibility of a maxim: He tells us to ask ‘Can its universalization be *thought* without contradiction?’ and ‘Can its universalization be *willed* without contradiction?’ Any maxim that

fails the first test will also fail the second and any action on a maxim that fails the second test is forbidden. But some maxims not only fail the second but also the first test. The universalized maxim to make a false promise, for example, not only contradicts our own will but also our concept of promising. The duties to avoid acting according to such double-outlaw maxims are stricter than the duties to refrain from actions whose maxims only fail the second test. The duties of the first class are therefore called ‘strict’ or ‘perfect duties’, whereas the duties of the second class are called ‘imperfect duties’. The prohibition against using humanity merely as a means has the same function as the first test, the ‘contradiction-in-conception-test’: It serves to pick out the duties that are stricter and prevail over the duties of the other type. Kant thus employs the expression ‘using humanity merely as means’ in his Categorical Imperative to sum up all such perfect duties.[28]

Kant gives us a number of characterizations of perfect duties that changed in the course of his elaboration of a system of duties. To see what is characteristic of perfect duties it is helpful to contrast perfect duties with their counterpart, imperfect duties: All imperfect duties are duties of virtue and therefore duties in relation to certain obligatory ends. But they are duties not only to act in accordance with these ends, but to adopt them and pursue them as far as possible. An imperfect duty thus commands us to add an obligatory end to the set of ends that one pursues from inclination.

In Kant's eyes there are two obligatory ends: To improve one's own nature and to promote the happiness of others. It is thus my duty to care for others and to adopt their ends as my own ends. But there are many such ends and I cannot pursue them all at the same time. As my capacities to pursue ends are limited, there may be conflicts between these duties. I may have to choose, for example, to help my parents in a financial crisis or to donate money to an aid organisation. In such cases neither my parents nor the people helped by the organisation are wronged if I decide to help the other party. On the other hand, both acts will be meritorious.

Perfect duties are just the duties that have the opposite characteristics: They prohibit maxims or acts and do not prescribe pursuance of certain ends. In Kant's eyes, this implies that the compliance with perfect duties is 'owed' and violations incur blame. Compliance with perfect duties is thus not 'meritorious' as is the case with imperfect duties. Violations of perfect duties furthermore wrong individual people, while violations of imperfect duties do not wrong anyone in particular. Finally, perfect duties cannot conflict with each other.

We now know that we always use a person when we violate a perfect duty, i.e. a strong duty that we owe to a particular person. But Kant's account of using people as a violation of perfect duties does not provide us with a criterion to decide if someone is used or

not. Kant's account is in this regard even vaguer than the common sense notion. According to him, to say that someone merely uses another person informs us that he wrongs this person and that he violates a duty of a particularly strong kind, but it does not tell us independently when a person is used.

1.4. Permissible and impermissible use

Kant is very clear, though, with regard to an ambiguity mentioned in the previous chapter. As I argued there, our common vocabulary has expressions that do not carry a moral evaluation in every context. We can say that I use a taxi driver when he brings me to the airport, for example, without implying any moral evaluation. This ambiguity was even stronger with regard to the German of Kant's days. It was not uncommon to say that a soldier, a messenger or a servant was used by his lord[29] and Kant agrees with this neutral use of words when he says that it can, in general, be legitimate to use a person. To distinguish terminologically between the legitimate and the illegitimate use of a person Kant coins the expression 'to use somebody *merely* as a means'. While it is

morally acceptable and, moreover, almost unavoidable to use other people, it is always, at least pro tanto, wrong to *merely* use them. By clarifying the ambiguity of natural language Kant creates a thick concept that describes and, at the same time, reliably evaluates moral situations. But a terminological distinction does not give us a criterion to distinguish and we have criticised common sense for not offering such a criterion. Does Kant provide us with such a criterion?

The threshold that Kant draws between permissible and impermissible use can be seen in his famous example of a lying promise:

> 'Denn der, den ich durch ein solches Versprechen zu meinen Absichten brauchen will, kann unmöglich in meine Art, gegen ihn zu verfahren, einstimmen und also selbst den Zweck dieser Handlung enthalten.'[20]

Kant thus argues that the moral status of an act of use crucially depends on the consent of the person used. The person I use must give his consent that we have an interaction at all and must roughly agree about what kind of interaction we have. The morally required consent can be expressed in diverse manners. In many cases consent is given verbally, of course, but in suitable situations a nod,

a kiss or even staying silent can be acts of morally transformative consent. Some other forms of using people can only be made permissible by creating certain legal arrangements such as the institution of a marriage contract. Within such an institution a person is still using another person, but she is no longer *merely* using him and is therefore acting permissibly. Similar arrangements are necessary to legitimize using another person as a soldier and as a labourer. Kant discusses the case of military service and denies the supposed right of stately rulers 'to use its subjects in war against other states'[31]. Such a use of a person can only be legitimized if this person agrees to be used in the way proposed by the rulers:

'Dieser Rechtsgrund aber (der vermuthlich den Monarchen auch dunkel vorschweben mag) gilt zwar freilich in Ansehung der Thiere, die ein Eigenthum des Menschen sein können, will sich aber doch schlechterdings nicht auf den Menschen, vornehmlich als Staatsbürger, anwenden lassen, der im Staat immer als mitgesetzgebendes Glied betrachtet werden muß (nicht bloß als Mittel, sondern auch zugleich als Zweck an sich selbst), und der also zum Kriegführen nicht allein überhaupt, sondern auch zu jeder besondern Kriegserklärung vermittelst seiner Repräsentanten seine freie Beistimmung geben muß, unter welcher einschränkenden Bedingung allein der Staat über seinen gefahrvollen Dienst disponiren kann.'[32]

Kant argues similarly with regard to employment relations. According to him, all such relations can be understood as cases of one person using another. But, as we cannot prohibit all forms of employed work, we need socially established arrangements to render these interactions permissible. Working contracts are the means to do that:

> 'Daß jemand durch einen Vertrag berechtigt werden könne die Kräfte eines Andern zu jenes seiner Absicht zu gebrauchen (*locutio operae*) ist keinem Zweifel unterworfen denn dadurch begiebt er sich nicht seiner Persönlichkeit als freyes Wesen vielmehr sind diese Leistungen Acte seiner Persönlichkeit.'[33] (20:456)

Without such contracts one person having another work for his gain would be impermissible. As agreements between free people, contracts can be seen as legitimising otherwise impermissible interactions. But this also means that the interactions that we have called 'innocent uses' so far – the use of a taxi driver and of the postman were our favourite examples – are not really that innocent according to Kant. They are not situations of a kind that places them outside the reach of moral evaluation. They are rather *legitimised interactions* that are generally wrong or morally objectionable, but whose moral status can be changed by adequate

interpersonal or social arrangements.[34]

Kant here offers us a rather clear criterion to distinguish between permissible and impermissible uses of persons. It is the consent of the person used that legitimises an interaction of use. It should be kept in mind, though, that contracts can have this legitimizing power only as long as they can be understood as agreements between free people. There are limits on what can be agreed on in such contracts:

> Durch einen Vertrag kann sich niemand zu einer solchen Abhängigkeit verbinden, dadurch er aufhört, eine Person zu sein; denn nur als Person kann er einen Vertrag machen. Nun scheint es zwar, ein Mensch könne sich zu gewissen, der Qualität nach erlaubten, dem Grad nach aber unbestimmten Diensten gegen einen Andern (für Lohn, Kost oder Schutz) verpflichten durch einen Verdingungsvertrag (*locatio conductio*), und er werde dadurch bloß Unterthan (*subiectus*), nicht Leibeigener (*servus*); allein das ist nur ein falscher Schein. Denn wenn sein Herr befugt ist, die Kräfte seines Unterthans nach Belieben zu benutzen, so kann er sie auch (wie es mit den Negern auf den Zuckerinseln der Fall ist) erschöpfen bis zum Tode oder der Verzweiflung, und jener hat sich seinem Herrn wirklich als Eigenthum weggegeben; welches unmöglich ist.'[35]

According to Kant, it is thus impossible to agree to become a slave or a bonded labourer as no such agreement can be understood as a real, morally legitimizing agreement. Social arrangements such as contracts therefore owe their legitimizing power to conditions, such as human freedom and equality, which exist prior to the completion of the contract and must persist in the period during which the agreement is in force.[36] In Kant's eyes, there are thus no contracts that can render slavery or bonded labour permissible. These limits on contracts can be seen as well in the case of sexual relations, when Kant insists that no contract whatsoever can legitimize prostitution or polygamy.[37]

With the distinction between using and *merely* using people and the idea of consent Kant seems to offer a criterion to distinguish between perfect and imperfect duties. As the prohibition against using people is meant to cover all perfect duties, the criterion would also clarify the scope of this prohibition. Kant's remarks on the limits of the legitimizing power of consent and contracts reveal, however, that we still do not have such a criterion. Being aware that consent cannot render permissible many kinds of actions in Kant's eyes, we now have to know *when consent is legitimizing* and Kant does not offer us a clear-cut answer to this question. What we thus get from Kant is a picture of a huge class of duties that are covered by the prohibition against using people merely as means. But we do not get a criterion to tell why these duties fall under the

prohibition and whether there are further duties belonging to this class that were not mentioned in Kant's texts.

Let us now move on to the role that the concept of using people plays in Kant's account.

2. The concept's role in Kant's moral theory

Let me recapitulate what we have found out about the function that the notion of mere use plays in Kant's ethical theory. Kant employs the phrase 'to use humanity merely as a means' in spelling out one of the formulas of the Categorical Imperative, Kant's supreme principle of morality. While the whole formula is meant to cover all moral duties that we have as human beings, the prohibition of mere use comprises an important class of duties, i.e. all the duties that we directly owe to ourselves and our fellow humans. In the *Groundwork* Kant says that he uses the categories of perfect and imperfect duties only to order the examples he presents to illustrate the application of the Categorical Imperative, but it is unlikely that this is all Kant has in mind in introducing his categories. If we want

to understand more precisely why Kant wants to distinguish perfect from imperfect duties and what role the concept of merely using people has for him, we have to look at the function of the Categorical Imperative as a whole.

Philip Stratton-Lake distinguishes between three different roles the Categorical Imperative can be supposed to play.[38] These three roles can be characterized as answers to the following three questions: 1. Why shall we perform some action? 2. How do we know what we shall do? 3. How is it possible that we are morally obliged to act in certain ways? A principle that gives an answer to the first question plays an *explanatory* role and gives us the normative reasons that render our actions right or wrong.[39] An answer to the second question does not provide normative reasons for action, but rather *epistemic* reasons to *believe* that we have conclusive normative reasons to act in a certain way. A principle that gives an answer to this question has a *criterial* role to play.[40] The third question must be answered by pointing to the conditions that have to be fulfilled for us to have any moral duties at all, besides the existence of normative reasons. An answer to this question would play a *transcendental* role in our moral theory. To fulfil this role one has to state what it *means* to say that an act is wrong.[41]

According to Stratton-Lake, the Categorical Imperative can play the second and the third role, but it cannot play the first one.

Stratton-Lake argues that normative reasons must be reasons that can motivate us to act. But the Categorical Imperative does not provide any reason that can directly motivate us. It only tells us if an action would be permissible or forbidden, but it does not point to the reasons for performing or omitting the act in question. The merits of Stratton-Lake's distinction notwithstanding, it seems clear that he is mistaken in supposing that his argument about the role of the Categorical Imperative presents Kant's own views. If we look at the passages where Kant argues for the existence of certain duties, such as the prohibition of suicide, of masturbation or of lying, we see that Kant means to name the reasons for the wrongness of these act types by referring to the Formula of Humanity. He is explicit about this in his argument for the wrongness of masturbation:

> 'Daß ein solcher naturwidrige Gebrauch (also Mißbrauch) seiner Geschlechtseigenschaft eine und zwar der Sittlichkeit im höchsten Grad widerstreitende Verletzung der Pflicht wider sich selbst sei, fällt jedem zugleich mit dem Gedanken von demselben sofort auf. […] Der Vernunftbeweis aber der Unzulässigkeit jenes unnatürlichen und selbst auch des blos unzweckmäßigen Gebrauchs seiner Geschlechtseigenschaften als Verletzung (und zwar, was den ersteren betrifft, im höchsten Grade) der Pflicht gegen sich selbst ist nicht so leicht geführt. Der *Beweisgrund* liegt freilich darin, daß der Mensch seine Persönlichkeit dadurch (wegwerfend) aufgiebt, indem er sich blos zum Mittel der Befriedigung thierischer Triebe braucht.'[12]

Kant argues here that we all know that it is wrong to masturbate. We thus do not need the Categorical Imperative to tell us this. What we do not see directly is why such behaviour is so abhorrent and this can be proved by referring to the Categorical Imperative. This principle thus definitely plays an explanatory role in the derivation of duties.[43]

Examples such as the one above have led Mark Timmons to offer an alternative interpretation. He argues that the Formula of Universal Law indeed offers a decision-procedure and plays a merely criterial role in the detection of wrongness. The Formula of Humanity, in contrast, provides the reasons for the wrongness of acts.[44] Timmons thus confirms our findings about Kant's use of the Formula of Humanity in the derivation of concrete duties. I also find Timmons arguments for the role of the Formula of Universal Law convincing – especially if taken together with Stratton-Lake's considerations concerning the motivating force of its concepts –, but I will not argue for the role of the Formula of Universal Law here. What matters to me at this point is that Kant intends the notion of a mere use of humanity to give us reasons for the wrongness of certain act types, namely all violations of perfect duties. Kant thereby assigns a role to the concept of merely using people that it already has in our common sense discourse: He employs the concept to evaluate a specific type of action – a type with a very wide scope, though – and he sees the evaluation as a

morally strict one. At the same time, the concept gives us the normative reasons for our morally strict judgement of the behaviour at hand and thus plays an explanatory role in Stratton-Lake's sense.

This explanatory role of the notion of mere use makes it one of the most central notions of Kant's moral theory. But I think that the notion's role is not limited to this. Let us look at Kant's condemnation of organ donation for commercial purposes:

> 'Sich eines integrirenden Theils als Organs berauben (verstümmeln), z.B. einen Zahn zu verschenken oder zu verkaufen, um ihn in die Kinnlade eines andern zu pflanzen, oder die Castration mit sich vornehmen zu lassen, um als Sänger bequemer leben zu können, u.dgl. gehört zum partialen Selbstmorde; aber nicht ein abgestorbenes oder die Absterbung drohendes und hiemit dem Leben nachtheiliges Organ durch Amputation, oder, was zwar ein Theil, aber kein Organ des Körpers ist, z.E. die Haare, sich abnehmen zu lassen, kann zum Verbrechen an seiner eigenen Person gerechnet werden; wiewohl der letztere Fall nicht ganz schuldfrei ist, wenn er zum äußeren Erwerb beabsichtigt wird.'[45]

In the last two lines of this passage Kant introduces a new category of evaluation. He judges it to be permissible to cut off and sell one's hair, but he insists that even this kind of behaviour is 'not

without blame'. Here again it is not the external act itself that is responsible for the negative evaluation but rather the end intended by the agent. If he cuts off his hair in order to sell it, he is not thereby treating himself *merely* as a means, but he is still treating himself in an objectionable way.

A similar evaluation can be seen when Kant expresses his disapproval of any attempt to influence people by appealing to their inclinations. He does not try, for example, to hide his aversion to rhetorical artistry:

> 'Ich muß gestehen: daß ein schönes Gedicht mir immer ein reines Vergnügen gemacht hat, anstatt daß die Lesung der besten Rede eines römischen Volks- oder jetzigen Parlaments- oder Kanzelredners jederzeit mit dem unangenehmen Gefühl der Mißbilligung einer hinterlistigen Kunst vermengt war, welche die Menschen als Maschinen in wichtigen Dingen zu einem Urtheile zu bewegen versteht, das im ruhigen Nachdenken alles Gewicht bei ihnen verlieren muß. Beredtheit und Wohlredenheit (zusammen Rhetorik) gehören zur schönen Kunst; aber Rednerkunst (*ars oratoria*) ist, als Kunst sich der Schwächen der Menschen zu seinen Absichten zu bedienen (diese mögen immer so gut gemeint, oder auch wirklich gut sein, als sie wollen), gar keiner Achtung würdig.'[46]

Kant dislikes any use of people by appealing to their inclinations. In his eyes, this way of moving them does not deserve our approval and can sometimes even be 'deceitful'. But Kant does not condemn these cases of using people as treating them *merely as means*. Kant thus employs the concept of using people not only to pick out a class of impermissible actions, but also to characterize other forms of treating people that are not morally wrong. These permissible cases, nevertheless, are not simply beyond all moral reservations. To say that a rhetorician makes use of his audience's weaknesses does have a moral connotation in Kant's eyes, implying that the agent's behaviour is missing something for a full moral approval. Not only the notion of using people merely as means, but also the notion of using people is thus a thick concept in Kant's eyes. Using people is for him always morally critical, but only some forms of use are morally impermissible. The second role that Kant assigns to the concept of using people is thus again similar to one that we find in common sense. As the example of the *"Friendly Neighbour"* was meant to show in the preceding chapter, we sometimes employ the concept of using people to describe cases with a critical connotation, but without condemning the behaviour at hand as morally wrong in a strict sense. Kant accepts this use of his theoretically formed notion as well.

Kant thus accepts four roles for the prohibition against using people: The prohibition plays a criterial, an explanatory and a

transcendental role in judging the wrongness of acts and it offers, in addition, an ideal for the development of our moral character and of the institutions of our society. In this regard Kant's account of using people is certainly clearer than the notion that we found in common sense. Like the common sense notion, however, Kant still does not provide us with a reason why he uses expressions that refer to act types as well as to attitudes. It is therefore still an open question if is it a misleading feature of Kant's terminology that it contains expressions that are ambivalent with regard to their moral function or if there is an underlying rationale in employing the same expressions in both these roles?

3. Kant's justification for the wrongness of using people

Our survey into Kant's account of using people has revealed the distance of his position from the common sense notion with regard to the concept's *scope*. The *role* that the concept plays in his theory, in contrast, is quite similar to the one that we detected in common sense. Kant completed and explained the common sense notion furthermore by adding the idea of consent as the relevant criterion

to distinguish between the legitimate and the illegitimate use of persons. With regard to the *justification* of the impermissibility of using persons, Kant's account seems to differ again from the justification that we found in common sense. If asked what reason they have to complain about having been used, many people will answer that they *feel used* and maybe add that this is an unpleasant sensation. To feel used is a negative consequence of an act and Kant stresses at many points in his work that the consequences of an act can have no influence on the act's moral quality.[47] Kant would therefore, it seems clear, reject the common sense justification. But let us have a look at his actual strategy in justifying the prohibition against using people merely as a means.

4.1 Means and ends

If we have a look at the passage where Kant introduces the concept of using people in the *Groundwork*, we find that Kant's search for the justification of moral principles is a typical example of his transcendental method: He has already analysed what a moral principle is and now asks what conditions have to be fulfilled for

such principles to be real and valid. Pointing to the necessary conditions of moral principles and showing them to be fulfilled is what would justify our following them. Kant analyses the necessary conditions for the existence of moral principles in the second part of his *Groundwork*. The proof that these conditions are fulfilled is undertaken in the third part and revised in the *Critique of Practical Reason*. I will confine myself to presenting Kant's considerations about what conditions have to be fulfilled for a moral principle to exist and skip his difficult and unsatisfying attempts to prove that they are fulfilled as well.

Kant believes that he has shown that a moral principle for human beings must have the form of a categorical imperative. In contrast to merely hypothetical imperatives, categorical ones have three characteristics: They command with 'absolute necessity', they 'hold for all rational beings' and they can be known a priori:

> 'Everyone must admit that a law, if it is to hold morally – that is, as the ground of an obligation – must carry with it absolute necessity; that the command 'Thou shalt not lie' does not hold just for men, without other rational beings having to heed it, and similarly with all the other genuine moral laws; and that consequently the ground of obligation here must be sought, not in the nature of man or in the circumstances of the world where he is located, but solely *a priori* in the concepts of pure reason.'[48]

A principle has absolute necessity, according to Kant, if its addressee cannot exempt himself from its force, either by pointing to the circumstances or by making an exception for himself. All such necessary principles furthermore hold for all rational beings as their necessity rules out the possibility that they depend on particular features of an individual person. We thus know them to hold and know everybody else to know them to hold without empirical observations about our own psychological features or the state of the world. According to Kant, we have an a priori knowledge of everything that morality requires.[49]

How can there be moral principles that possess these features, i.e. how are categorical imperatives possible? Kant starts his answer to this question with a summary of his theory of action:

> 'Der Wille wird als ein Vermögen gedacht, der Vorstellung gewisser Gesetze gemäß sich selbst zum Handeln zu bestimmen. Und ein solches Vermögen kann nur in vernünftigen Wesen anzutreffen sein. Nun ist das, was dem Willen zum objectiven Grunde seiner Selbstbestimmung dient, der Zweck [...]. Was dagegen bloß den Grund der Möglichkeit der Handlung enthält, deren Wirkung Zweck ist, heißt das Mittel'.[50]

Kant argues here that in all their actions rational beings act according to laws, they act for the sake of ends and they choose the means that serve them. The first statement must, I think, be understood to mean that rational agents act for reasons and that the grasp of reasons always proceeds via the representation of some general principle. This is already one feature of practical reasoning that makes categorical imperatives possible, according to Kant, and he uses it to spell out his first formula, the Formula of Universal Law. But one may wonder what can motivate us to follow such an abstract principle that only gives us the form of a moral law. Kant therefore looks for another basis of categorical imperatives and moves on to the other elements of his theory of action, to means and ends. Kant believes that all acts are done for some end and that we have to look here to find the material that can serve as a foundation for categorical imperatives. But certainly not every end can play this role. Kant therefore examines what conditions an end must meet to ground a necessary, objective and a priori moral principle. Kant's answer is straightforward: An end that grounds a necessary, objective and a priori principle must be necessary, objective and a priori itself. Something more has to be said, of course, to see more clearly what such an end would look like, but before I come to this question I want to try to solve two puzzles about Kant's notion of an end.

Kant defines ends as 'what serves the will as the objective ground of its self-determination'. This definition is puzzling as Kant goes on to distinguish between subjective and objective ends in the passage that directly follows the definition and one must ask how objectivity can be part of the definition of ends if there are also subjective ends. A closer look reveals that Kant is actually talking about 'objective grounds' and not about 'objective ends', but this observation alone does not remove our puzzlement unless Kant can also explain how subjective ends can be objective grounds of self-determination. Kant's answer will refer, I believe, to the ambiguity of the word 'objective'. The predicate 'objective' can indicate that something is not only relative to one particular subject, but that it has a larger area of validity; or it can be understood – following expressions such as 'the object of my perception' etc. – to refer to the content or 'object' of some mental state. When Kant distinguishes between subjective and objective ends, he has the first sense in mind, and when he talks about 'objective grounds' he presupposes the second. We also find this second sense in Kant's statement that ends are 'objects of the will'[31]. His definition in the *Groundwork* should therefore be taken to mean that ends are the contents that we have in mind as the sake for which we act.

The second puzzle concerns Kant's definition of 'means': 'Was dagegen bloß den Grund der Möglichkeit der Handlung enthält, deren Wirkung Zweck ist, heißt das Mittel'. I think we can make

sense of this awkward characterisation, if we realize that an end alone cannot lead to an action. If I have the end to become a lawyer, for example, I still have to consider how I can get there before I begin to act. I must look for the 'possibility of action' and that is, for the means to become a lawyer. Kant says furthermore that ends are the 'Wirkung' or 'consequence' of means and this suggests a causal understanding of 'means' and 'ends'. Means and ends are thus links in a causal chain of events.[52] This is a widespread understanding of means and ends[53], but it causes some difficulties for Kant that come to the fore if we look at passages where Kant says that bread can be an end and a mill can be the means to achieve it.[54]. The 'objective grounds' that Kant has in mind here as means and ends are not events but individual things. This understanding of 'means' is not foreign to our contemporary use of language. We say that studying law is a means to become a lawyer, but we also say that a pencil is my means to draw a portrait, for example. The expression 'means' is thus ambiguous in that it can refer to events as well as to concrete objects.[55] But if Kant wants to include both events and individual objects in his notion of means and ends he cannot understand their relation to be causal, as only events can be causally related. The analogy between means as things and means as events is thus not a causal one, but Kant has an alternative way of justifying his use of 'means' that covers both aspects:

> 'Wir nennen einiges *wozu gut* (das Nützliche), was nur als Mittel gefällt; ein anderes aber *an sich gut*, was für sich selbst gefällt. In beiden ist immer der Begriff eines Zwecks, mithin das Verhältniß der Vernunft zum (wenigstens möglichen) Wollen, folglich ein Wohlgefallen am Dasein eines Objects oder einer Handlung, d.i. irgend ein Interesse, enthalten.'[56]

Kant here distinguishes between means and ends in terms of their goodness. Both are related to some 'Wohlgefallen am Dasein eines Objects oder einer Handlung', but whereas ends *are* these objects or acts and 'please for themselves', means are only *good for* this object. Their goodness is therefore only relative as it depends on other things being good. The distinction between means and ends in this sense is a distinction between different kinds of value.[57] The value of a means *can* be relative in the sense that the means stands in a causal relation to some end and achieves value by bringing this end about. The causal and the evaluative understandings of means and ends coincide with regard to such cases. But means can also achieve value through other kinds of relations and the causal understanding of means and ends is thus only part of the wider evaluative understanding of these terms.

4.2 Values

Kant's use of the word 'end' is idiosyncratic and therefore often misleading. We thus might wonder why Kant did not choose the word 'value', that expresses what he actually meant and that he also uses quite frequently. But Kant's introduction of the term 'end' is not just an oddity. The choice of this term makes it clear that something is a value in Kant's eyes only if it can be something that guides our action. An end is always something for the sake of which we act and Kant believed that values are action-guiding in the same way. Kant thus defended a dispositional theory of value according to which all value is constituted by being valued in some way.[58] The valuation of moral value in particular cannot be a merely contemplative state of mind in Kant's eyes, but must always provide reasons for action. As Kant calls all reasons for actions 'ends', it also makes sense to use this word within his theory of value.

I abandoned my search for Kant's justification of the prohibition against using people for a moment to clarify his notions of means and ends. The notion of an end is important for Kant's strategy of moral justification because he believes that an end must provide the material for a categorical imperative to be possible.[59] As the

categorical imperative is a necessary, objective and a priori principle, according to Kant, the end to ground such a principle must be necessary, objective and a priori as well. What does such an end look like?

I want to start one step before Kant enters into the discussion by saying that, first of all, an end to ground a categorical imperative cannot be a means. This sounds paradoxical as something being an end seems to preclude it from also being a means. But this is not true. Means in a causal sense are ordered hierarchically so that one means leads to an end that is a means to some further end. My studying law at university can be the end of my efforts at high-school, but, at the same time, it can be my means to become a lawyer. 'Means' and 'ends' in a causal understanding therefore denote relational concepts in the sense that an answer to the question if some event is an end or a means depends on the event to which we compare. Kant believes that it goes without saying that the end he is looking for cannot be an end that is at the same time a means to some other state or event. If an end is a causal end, it can thus only ground a categorical imperative if it is a final end in my plan of action.

Kant argued that an end that grounds a necessary, objective and a priori principle must itself be necessary, objective and a priori. A necessary end is an end that I am forced to pursue in all situations

and under all circumstances. This condition rules out most of the final ends that we pursue in our lives. It is sometimes the final end of our plans to have a nice game of tennis. We then pursue no further end with such a game, but simply want to spend a nice time playing tennis. But at some other time we may play tennis to stay in good shape or to earn money. Such ends that we sometimes pursue for their own sake and sometimes for some further end, are not a necessary ends, as their being final depends on the circumstances. Such ends cannot be the grounds for categorical imperatives.

Some of the ends that we pursue in our lives we never pursue for the sake of anything else. I may have the end to become a lawyer, for example, just because I find a lawyer's work interesting and fulfilling. This end may always be a final end in my motivational set, but it is surely not an *objective* end as many people, thank God, do not want to become lawyers. As a categorical imperative is thought to be authoritative for everybody, the end that grounds such a moral principle cannot be based on an end that depends on 'ein besonders geartetes Begehrungsvermögen des Subjects'[60].

It was already argued by Aristotle that there is indeed one end that everybody pursues as a final end, namely the end to be happy. But happiness is something that is, at least partly, brought about by human action, and Kant argues that 'die Zwecke, die sich ein vernünftiges Wesen als Wirkungen seiner Handlung nach Belieben

vorsetzt (materiale Zwecke)'[61] are all only relative and cannot provide the grounds for a categorical imperative. This argument would rule out all events and all individual objects that can be produced by human beings as candidates for grounding moral principles and we may ask what reasons Kant has to offer for this surprising claim. The main line of Kant's argument can be seen, I believe, in the following passage:

> 'Entweder ein Vernunftprincip wird schon an sich als der Bestimmungsgrund des Willens gedacht, ohne Rücksicht auf mögliche Objecte des Begehrungsvermögens [...] oder es geht ein Bestimmungsgrund des Begehrungsvermögens vor der Maxime des Willens vorher, der ein Object der Lust und Unlust voraussetzt, mithin etwas, das vergnügt oder schmerzt, und die Maxime der Vernunft, jene zu befördern, diese zu vermeiden, bestimmt die Handlungen, wie sie beziehungsweise auf unsere Neigung, mithin nur mittelbar (in Rücksicht auf einen anderweitigen Zweck, als Mittel zu demselben) gut sind, und diese Maximen können alsdann niemals Gesetze, dennoch aber vernünftige praktische Vorschriften heißen. Der Zweck selbst, das Vergnügen, das wir suchen, ist [...] nicht ein Begriff der Vernunft, sondern ein empirischer Begriff von einem Gegenstande der Empfindung.[62]

Kant here contrasts two fundamental ways of setting an end: Some ends are directly given by reason. These ends provide reasons for action, but they do so without appealing to our faculty of desire. The

other kind of ends is suggested to us by our faculty of desire by presenting them as likely to produce pleasure and pain[83]. These latter kinds of ends can therefore only motivate us if we presuppose 'einen anderweitigen Zweck', namely the end to seek pleasure and to avoid pain. This implies that they are only 'mittelbar gut' and thus cannot ground a categorical imperative. Let us take an example. I want to become a lawyer and it seems to me that I am pursuing this end just for its own sake. But Kant wants to know how such an end can motivate me to act, how it can motivate me to study law at university, for example. An end is a representation of an event or an individual object and if the event or the object are things to be brought about through my acts, than they can only motivate me, according to Kant, if they are represented as pleasant. As future entities in the world they have no other attraction than their promise of pleasure, even if this pleasure is of a refined kind such as the pleasure of having a fulfilling job.

The problem with ends to be realised through our actions is not that the pleasure they promise is something despicable – though Kant sometimes speaks as if that were the case. Neither is it their problem that they are ends that cannot be shared by most people – though Kant also sometimes suggests this. The problem with ends to be brought about is rather that they can only be acknowledged as ends by experience. Such an end is 'nicht ein Begriff der Vernunft, sondern ein empirischer Begriff' and this is a problem for grounding

a categorical imperative because the necessity that we expect of a categorical imperative, according to Kant, can only be provided by ends that can be known a priori.

But how can there be an end that is not known empirically? How can we be motivated without imagining some effect in the world? As we already saw, Kant believes that there is a second way to set ends. The will cannot only be moved by the representation of some pleasant future state, but can also be determined directly by reason. The end that reason determines directly cannot be a future state for the reasons we just saw. It must be what Kant calls a 'selbstständiger Zweck'[64], i.e. it must be an individual thing that already exists. It is unusual to say that an existing individual thing can be the end of our action[65], but if we remember that Kant calls everything an 'end' that provides reasons for action, we can make sense of his claim. It is plausible to say that there are existing individual things for the sake of which we act. We can act for the sake of the American flag or for the sake of a beloved person, for example.[66] The end that grounds a categorical imperative cannot be an existing individual thing that we happen to like, however, because these ends again can only be known empirically and become our ends by our setting them. In this respect, many existing ends do not differ from ends that can be brought about through our actions. Kant therefore argues that the end that is given directly by reason must be an end that is not set by us, but an existing end that can motivate us to direct our behaviour

in a certain way.

So far we have seen what conditions an end must fulfil in Kant's eyes to be able to serve as a source for moral principles. These conditions might seem so demanding that it is hard to imagine an end that really meets them. But Kant believes that there is indeed such an end. Let us have a look at the passages where he says what this end is:

> 'Nun sage ich: der Mensch und überhaupt jedes vernünftige Wesen existirt als Zweck an sich selbst, nicht bloß als Mittel zum beliebigen Gebrauche für diesen oder jenen Willen, sondern muß in allen seinen sowohl auf sich selbst, als auch auf andere vernünftige Wesen gerichteten Handlungen jederzeit zugleich als Zweck betrachtet werden. […] dagegen vernünftige Wesen Personen genannt werden, weil ihre Natur sie schon als Zwecke an sich selbst, d. i. als etwas, das nicht bloß als Mittel gebraucht werden darf, auszeichnet, mithin so fern alle Willkür einschränkt (und ein Gegenstand der Achtung ist). Dies sind also nicht bloß subjective Zwecke, deren Existenz als Wirkung unserer Handlung für uns einen Werth hat; sondern objective Zwecke, d. i. Dinge, deren Dasein an sich selbst Zweck ist. [...] Wenn es denn also ein oberstes praktisches Princip und in Ansehung des menschlichen Willens einen kategorischen Imperativ geben soll, so muss es ein solches sein, das aus der Vorstellung dessen, was nothwendig für jedermann Zweck ist, weil es Zweck an sich selbst ist, ein objectives Princip des Willens ausmacht, mithin zum allgemeinen praktischen Gesetz dienen kann. Der Grund dieses Princips ist: die vernünftige Natur existirt als Zweck

an sich selbst.'[62]

Kant's answer looks simple at first glance. He seems to be saying that there is only one end that fulfils his criteria for grounding a categorical imperative: human beings and all other rational creatures. But this answer, clear though it seems, leads to new puzzles. Two of the most intriguing ones are the following questions: How can human beings or rational creatures be the ends of our actions? Why are they supposed to possess absolute value? I will try to sketch Kant's answer to the first question in the remainder of this chapter. The second puzzle has led to a controversy about whether Kant is really speaking about human beings in this passage. He often says that 'humanity' is an end in itself, but some interpreters argue that the meaning of this word is less obvious than it seems. Especially the expression 'rational nature' seems to allow the interpretation that Kant is not speaking about *the class* of all human beings, but of the *nature* of human beings, or more concretely, about the *capacity* that is essential to being human. Depending on which of these interpretations is chosen, the answers to the question of why rational nature is supposed to be absolutely valuable differ. I will present these different interpretations and their attempts to solve the problem of the last step in Kant's justification of the Formula of Humanity in

the chapters that follow. I will use the word 'rational nature' in the following as this expression seems most apt to express both interpretations and allows me to stay neutral for the moment.

4.3 Dignity

So far I have presented Kant's argument in the *Groundwork* that there is only one end that can be thought to ground a categorical imperative, an end that Kant calls 'rational nature'. Although we do not know exactly what Kant meant by this expression, we know that it is supposed to refer to an existing individual thing that gives us reason for action. But how can an existing thing provide us with reasons for action?

One step of Kant's argument had been that the end that grounds a categorical imperative cannot be an end that we can bring about through our actions, but must be an existing end. The argument stresses that any end that can *be brought about* must be a future state and we can never know a priori if some future state is capable of motivating every rational being. The same argument seems to

apply, though, to any kind of action that is defined by its results. Some existing objects that seem valuable in some way require these kinds of actions: Useful tools ought to be maintained, tasty apples should be reproduced and good books should be multiplied. Moreover, existing capacities can be promoted and increased. But 'to bring about', 'to maintain', 'to reproduce', 'to multiply', 'to promote' and many other verbs describe activities that can only be said to have been performed if a certain result is achieved.[68] Kant therefore cannot say that the value of rational nature directly gives us reason to reproduce or to promote it because reproduction and promotion resemble the act of bringing about in that they are directed at the future states of its object and our aiming at such future states would, again, presuppose an external or, as Kant would say, heteronymous motivation:

> 'Die vernünftige Natur nimmt sich dadurch vor den übrigen aus, daß sie ihr selbst einen Zweck setzt. Dieser würde die Materie eines jeden guten Willens sein. Da aber in der Idee eines ohne einschränkende Bedingung (der Erreichung dieses oder jenes Zwecks) schlechterdings guten Willens durchaus von allem zu bewirkenden Zwecke abstrahirt werden muß (als der jeden Willen nur relativ gut machen würde), so wird der Zweck hier nicht als ein zu bewirkender, sondern selbstständiger Zweck, mithin nur negativ gedacht werden müssen [...].'[69]

In this passage Kant concludes from the peculiar nature of the value he was looking for that the adequate reaction to this value can 'only be thought negatively' without any implications concerning its future states. All adequate reactions that fulfil this condition are grouped together by Kant under the comprehensive name 'respect'. The reasons for action that rational nature provides are thus reasons to respect rather than to reproduce or to promote it.

To better explain the distinction between respect and other reactions to existing valuable entities Kant introduces the further distinction between dignity and price. This distinction is based on the idea that not every existing object that has value is an end in itself that can ground a categorical imperative. Existing entities that have a price do not differ much from future states that can be brought about because the adequate reactions to them are, as we have seen, defined by their results. But Kant offers us a new criterion to determine the difference between these reactions and the respect that we owe to ends in themselves:

> 'Im Reiche der Zwecke hat alles entweder einen Preis, oder eine Würde. Was einen Preis hat, an dessen Stelle kann auch etwas anderes als Äquivalent gesetzt werden; was dagegen über allen Preis erhaben ist, mithin kein Äquivalent verstattet, das hat eine Würde. […] Diese Schätzung [durch Achtung] giebt also den Werth einer solchen Denkungsart als Würde zu

> erkennen und setzt sie über allen Preis unendlich weg, mit dem sie gar nicht in Anschlag und Vergleichung gebracht werden kann, ohne sich gleichsam an der Heiligkeit derselben zu vergreifen.'[20]

Kant makes it clear in this passage that existing entities that should be maintained, reproduced or promoted are comparable in value and thus, in principle, replaceable. A useful tool, for example, has value *in comparison* to other tools. If we can replace it by another tool that fulfils its function even better than the first one, then it significantly loses value and maybe forfeits it entirely. Whatever has dignity, in contrast, does not have value in comparison to other valuable things, but is, in other words, valuable in itself. To respect this kind of value means first of all, to acknowledge that the entity has value in itself. We thus have to appreciate that its value does not depend on its relation to anything else and that it cannot be compared and weighed up against any other valuable state or object:

> 'Achtung, die ich für andere trage, oder die ein Anderer von mir fordern kann (*observantia aliis praestanda*), ist also die Anerkennung einer Würde (*dignitas*) an anderen Menschen, d. i. eines Werths, der keinen Preis hat, kein Äquivalent, wogegen das Object der Werthschätzung (*aestimii*) ausgetauscht werden könnte.'[21]

For Kant, respect is thus, first of all, an inner act of recognition. But once we recognize entities as having the special value called 'dignity', we will also treat them accordingly. This implies that we do not act in ways that somehow imply that these entities have only a price that can be compared and weighed up against the value of other things. This is typically done, if we do not treat rational nature as an end in itself, but only as a means that achieves value from its relation to something else. Dignity is thus directly connected to the Formula of Humanity:

'Denn der Mensch kann von keinem Menschen (weder von Anderen noch sogar von sich selbst) blos als Mittel, sondern muß jederzeit zugleich als Zweck gebraucht werden, und darin besteht eben seine Würde.'

The adequate reaction to the special value that Kant calls 'dignity' is thus to refrain from using the bearer of the value as a mere means and to treat him always as an end in itself instead. By this connection Kant got from his theory of value to one specific variant of the categorical imperative, namely the Formula of Humanity.

To sum up Kant's complex justification of the prohibition against using people merely as means, we can distinguish six steps: 1. Kant begins his argument by noticing that we presuppose that there is

indeed a categorical imperative. 2. He then asks what is necessary for such a categorical imperative to exist and concludes that we need to have an end that is an end in every situation, an end for everybody and an end that can be known a priori. 3. He furthermore argues that such an end cannot be a future state, but must be an existent object. 4. He believes that there is only one such end, namely rational nature. 5. The adequate reaction to this existent end is respect and this means that rational nature must be recognized as having a value that does not depend on the value of anything else and that cannot be estimated by comparing it to the value of other valuable states or objects. 6. To treat something as a means implies seeing its value as depending on the value of something else and respect therefore forces us to treat rational nature not merely as a means, but always as an end in itself.

4. Open questions

I have tried to present Kant's justification in a plausible way and I think that many of his ideas – his axiological distinctions and the idea of dignity, for example – do have a strong intuitive appeal.

One might criticise, however, that they do no more than to raise 'an obscure feeling of sublimity'[73]. Although I think that this criticism is inadequate, it is indeed true that Kant's remarks leave one puzzled about how we get from the idea of humanity as an end in itself to concrete moral duties. Generally speaking, we may wonder how Kant's justification for the prohibition against using people is connected to its scope.

This problem about the justification offered by Kant is also related to two problems that I already mentioned. With regard to Kant's considerations about the role of the prohibition against using people I asked whether it is a misleading feature of Kant's terminology that it contains expressions that are ambivalent with regard to their moral function or if there is an underlying rationale in employing the same expressions in both these roles. Kant's justification again points to the importance of our attitudes when he says that the fundamental moral value requires us first of all to recognize what particular a value it is. Here again we want to know, though, how this attitude is connected to the actions that are presumed to be forbidden by the prohibition against using people merely as means.

At the end of the first section about the scope of Kant's prohibition I argued that Kant does not offer us a criterion to tell whether an act falls under the prohibition against using people or not. We now see

that this problem remains after we have come to know what role Kant assigns to this prohibition and how he believes it to be justified. I therefore move now to contemporary accounts of using people that try to give answers to these questions left open by Kant's account of using people.

Notes

1Some modern writers also point to an Aristotelian legacy and argue for a similarity between Kant's idea of using people and Aristotle's idea of a 'friendship of use'. See Ronald M. Green, “What Does it Mean to Use Someone as "A Means Only": Rereading Kant,” *Kennedy Institute of Ethics Journal*, 2001. It is indeed interesting to see that Aristotle says that personal relationships that do not aim at the other person's better, i.e. moral self are defective in a way. This idea certainly resembles some of Kant's views on respect and love for humanity. It is clear, though, that Aristotle's employment of his idea is far more limited and that it does not involve any direct restriction of our behaviour, for example.

2Jacob Grimm and Wilhelm Grimm, *Deutsches Wörterbuch* (München: Dtv, 1999), vol.4, p.1830; the term had also been employed by philosophers before, for example by Locke: 'Being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours', see John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), §4, pp.269-271. Locke expresses ideas that are similar to some of Kant's considerations, but he did not assign a systematic role to the concept of using people.

3I will cite from Kant's work, as usual, by referring to the following edition: Immanuel Kant, *Kant's gesammelte Schriften*, ed. Preussische Akademie der Wissenschaften (Berlin: Reimer, 1900), abbreviated 'Ak.' in what follows. The first number after this abbreviation refers to the volume of this edition, the second to the page number in that volume; the translation is taken here from Mary Gregor, *Immanuel Kant: Practical Philosophy* (Cambridge: Cambridge University Press, 1996).

4The only two exceptions I know are Don E. Marietta, “On Using People,” *Ethics* 82, no. 3 (1972); and Norvin Richards, “Using People,” *Mind* 87, no. 1 (1978): 98.

5William David Ross, *Kant's Ethical Theory - A Commentary on the Grundlegung zur Metaphysik der Sitten* (Oxford: Clarendon Press, 1969), pp.48-57; see also Marcus George Singer, *Generalization in Ethics* (Macmillan Pub Co, 1971).

6Samuel Kerstein, “Treating Oneself Merely as a Means,” in *Kant's Ethics of Virtues*, ed. Monika Betzler (Berlin, New York: Walter de Gruyter, 2008), pp.201-218.

7Allen Wood, “Humanity As End in itself,” in *Kant's Groundwork of the Metaphysics of Morals: Critical Essays.*, ed. Paul Guyer (Lantham: Rowman & Littlefield, 1998), p.184.

8Kerstein, “Treating Oneself Merely as a Means,” p.201.

9The corresponding German expressions are: 'sich anderer Menschen bloß als Mittel zu bedienen' (4:429); 'bloß als Mittel zu behandeln' (4:429); 'bloß als Mittel zu schätzen' (4:433, 4:437 und 6:434).

10I do not want to deny that our moral discourse includes duties to oneself. I think that it does, but we do not usually refer to these duties by saying that one should not *'use oneself'*. More common is the expression 'Don't let them use you!', but this advice is not advice against *using* oneself.

11See, for example, Immanuel Kant, *Eine Vorlesung Kants Über Ethik*, ed. Paul Menzer (Berlin: Heise, 1924), p.147.

12Ak. 6:425.

13Masturbation is in Kant's eyes actually so abhorrent 'that even to call this vice by its own name is considered to be against morality' (6:425). When speaking about masturbation Kant often adds sodomy and homosexuality as *criminis carnibus* and says that people engaging in these practices throw away their dignity (see, for example, Immanuel Kant, *Eine Vorlesung Kants Über Ethik*, ed. Paul Menzer (Berlin: Heise, 1924). Kant does not explicitly mention them as cases of *using oneself*, but as Kant condemns all sorts of extramarital sex because one would merely use oneself, he would probably include sex with animals and with partners of the same sex in his argument.

14It is important to note that Kant does not say that it is always wrong to kill oneself. Whether this external action is permissible or not depends on the agent's maxims, according to Kant. See also David Velleman, “A Right of Self-Termination?,” *Ethics* 109, no. 3 (1999); and Lara Denis, *Moral Self-Regard Duties to Oneself in Kant's Moral Theory* (New York: Garland Publishing, 2001).

15Ak. 6:423.

16Cf. Ak. 6:421: 'Die Pflicht des Menschen gegen sich selbst, als ein animalisches Wesen'.

17Cf. Ak. 6:422.

18Ak. 6:430.

19Cf. Jens Timmermann, “Kantian Duties to the Self, Explained and Defended,” *Philosophy*, 2006, p.517.

20Ak. 4:430.

21This does not mean, of course, that two corresponding duty violations are always committed at the same time, cf. 'Die Übertretung dieser Pflicht der Wahrhaftigkeit heißt die Lüge; weshalb es äußere, aber auch eine innere Lüge geben kann: so daß beide zusammen vereinigt, oder auch einander widersprechend sich ereignen können.' (Ak. 8:421)

22Ak. 19:466.

23In contrast to the case of lying, sex is an example where the two corresponding duties are always violated *at the same time*. Kant thinks that I would not only merely use my partner in having extra-marital sex but also myself.

24Ak. 4:430.

25Ak. IV 429.

26See, for example, Onora O'Neill, “Between Consenting Adults,” *Philosophy and Public Affairs* 14, no. 3 (1985): p.262; and Thomas Hill, “Humanity as an End in Itself,” *Ethics* 91, no. 1 (1980): p.87.

27Cf. Hill, “Humanity as an End in Itself,” p.87; and Samuel Kerstein, *Kant's search for the supreme principle of morality* (Cambridge: Cambridge University Press, 2002), p.175.

28The clearest version of this interpretation is given by Jens Timmermann, *Kant's Groundworks of the Metaphysics of Morals* (Cambridge: Cambridge University Press, 2007), p.97; similar ideas can be found in O'Neill, “Between Consenting Adults,” pp.262-264; Christine Korsgaard, “Kant's Formula of Humanity,” *Kant-Studien* 77, no. 1 (January 1, 1986): pp.198-199; Wood, “Humanity As End in itself,” p.179.

29Cf. Grimm and Grimm, *Deutsches Wörterbuch*, vol.4, p.1830.

30Ak. 4:429-430.

31Ak. 6:344.

32Ak. 6:345.

33Ak. 20:456.

34Cf. Barbara Herman, “Could It Be Worth Thinking About Kant on Sex and Marriage?,” in *A Mind of One's Own*, ed. Louise Antony and Charlotte Witt (Boulder, Colorado: Westview Press, 1993).

35Ak. 6:330-331.

36Cf. Denis, *Moral Self-Regard Duties to Oneself in Kant's Moral Theory*, p.25.

37Cf. Ak. 19:461.

38Philip Stratton-Lake, *Kant, Duty and Moral Worth* (London: Routledge, 2000).

39Stratton-Lake calls this role 'justificatory', but I prefer the wider term 'explanatory'.

40Kerstein, *Kant's search for the supreme principle of morality* characterizes this role in more detail. He argues that Kant expects his supreme principle of morality, first, to help us in distinguishing between permissible, impermissible and obligatory acts, second, to judge what actions have moral worth and, third, to derive all genuine duties. As far as I can see, none of these more detailed functions necessarily involve the provision of normative reasons.

41I thus interpret this role to be the same that is described by Thomas Scanlon, *What we owe to each other* (Cambridge Mass.: Belknap Press of Harvard University Press, 1998), p.10. He says there that it is the chief aim of his contractualist account 'to characterize wrongness in a way that makes clear what reasons wrongness provides, and this aim goes beyond saying 'what makes acts wrong,’ at least on the most natural reading of these words.'.

42Ak. 6:425, my emphasis.

43Stratton-Lake may argue that the cited passage only shows that Kant is looking for a proof of the wrongness of masturbation. That can be done by employing a procedure that tells us if an act is right or wrong and does not necessarily mean that he is providing the normative reasons that make this act wrong. But if it is obvious that masturbation is wrong why would we need a proof of wrongness that does not reveal the underlying reasons?

44Mark Timmons, “Decision Procedures, Moral Criteria, and the Problem of

Relevant Descriptions in Kant's Ethics," *Jarbuch für Recht und Ethik (Annual Review of Law and Ethics)*, 1997.

45Ak. 6:423.

46Ak. 5:327.

47Cf. for example Ak. 4:428 and 4:394.

48Ak. 4:408. The translation is Velleman's; cf. David Velleman, "The Voice of Conscience," *Proceedings of the Aristotelian Society* 99, New Series (1999): pp.63-64.

49In this paragraph I closely follow Velleman. Ibid., pp.65-66.

50Ak. 4:427.

51Ak. 6:381.

52This reading is supported by Kant's definition of 'means' in the *Religion within the Limits of Reason alone* as 'alle Zwischenursachen, die der Mensch in seiner Gewalt hat, um dadurch eine gewisse Absicht zu bewirken' (6:192; see also 5:414).

53See, for example, Michael Bratman, *Intention, Plans, and Practical Reason* (Cambridge, Mass.: Harvard University Press, 1987).

54Cf. Ak. 5:26.

55Cf. Georg Henrik von Wright, *The Varieties of Goodness* (London: Routledge and Kegan, 1972), p.163.

56Ak. 5:207.

57A similar reading of Kant is offered by Thomas Scanlon, *Moral dimensions: permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008); and by David Velleman, *Self to self: selected essays* (Cambridge; New York: Cambridge University Press, 2006), p.41.

58For a definition of dispositional theories of value along these lines, see Michael Smith, David Lewis, and Mark Johnston, "Dispositional Theories of Value," *Proceedings of the Aristotelian Society, Supplementary Volumes* 63 (1989): 89-174.

59In the *Metaphysics of Morals* Kant adds that any moral justification must point to an end because otherwise morality would be ineffective in guiding our actions and enforcing its verdicts against the resistance of our inclinations, Ak. 6:380-381.

60Ak. 4:428.

61Ak. 4:428.

62Ak. 5:62; cf. Also Ak. 4:426.

63Although Kant sometimes speaks of pleasure and pain as 'Wirkungen' of acts, we should not understand them to be causal effects. If playing tennis is pleasurable for me then my pleasure *consists* in playing tennis and is not an effect of my playing tennis. Kant can make his point that my motivation for playing tennis is always mediated by my belief that it is pleasant, without presupposing any causal connection.

64Ak. 4:437.

65This is stressed, for example, by Ross, *Kant's Ethical Theory - A Commentary on the Grundlegung zur Metaphysik der Sitten*, pp.48-52.

66Cf. Velleman, *Self to self*, ch. 1; Allen Wood, *Kant's ethical thought* (Cambridge; New York: Cambridge University Press, 1999).

67Ak. 4:428-429.

68Cf. von Wright's distinction between results and consequences; Wright, *The Varieties of Goodness*, p.116.

69Ak. 4:437.

70Ak. 4:434-435.

71Ak. 6:462.

72Ak. 6:462.

73Pepita Haezhrahi, “The Concept of Man as an End-in-Himself,” in *Kant: A Collection of Critical Essays*, ed. Robert Paul Wolff (Garden City, NY: Anchor Books, 1967), p.291.

IV A Procedural Account of Using People

Although Kant's Formula of Humanity always had its admirers[1], it did not start to occupy a central position in the theoretical debates of Anglo-American philosophy until the 1980s. One of the factors that gave rise to a new interest in this part of Kant's philosophy was John Rawl's reference to the idea in his arguments against utilitarianism.[2] The idea was taken up in this same role by many other authors, like Thomas Nagel, Bernard Williams, Robert Nozick and Ronald Dworkin.[3] These pioneers did not present their own accounts of what it means to use a person, though, but merely alluded to the concept's intuitive appeal. The first moral philosophers to present Kant-inspired, but significantly revised accounts were Onora O'Neill and Christine Korsgaard.[4] I will therefore present their accounts at some length and concentrate again on the scope, the role and the justification they assign to the prohibition against using people merely as means.

1. The scope of possible consent

1.1 O'Neill on maxims and valid consent

Onora O'Neill starts her investigation of the notion of using people with a general interpretation of the Formula of Humanity and its parts. O'Neill complains that the two parts of the Formula – the prohibition against using people merely as means and the command to treat them as ends in themselves – are often employed with 'little distinction between the two'.[5] She believes that they differ in content and generality. According to her interpretation, we never violate the prohibition as long as we comply with the command, but we do not necessarily comply with the command if we only take care not to violate the prohibition. The command to treat people as ends in themselves is thus wider and also more ambitious than the prohibition against using people merely as means. O'Neill furthermore introduces three classes of duties: those of justice, of respect and of love. According to her interpretation, the prohibition against using people merely as means covers all duties of justice, i.e. all constraints on our interactions with other people. The command to treat everybody as an end in itself covers these duties of justice plus all duties of respect and all duties of love. Both duties of respect

and duties of love differ from duties of justice because to fulfil them we cannot abstract from the particular features of our interaction partners and 'must take into account “humanity in their person”, i.e., their *particular* capacities for rational and autonomous action'.[6] To respect other people we must keep ourselves at a distance from them and 'recognize that others’ maxims and projects are *their* maxims and projects'. To love each other we must come closer together and 'recognize the needs particular others have for assistance'.[7] These two kinds of duties are not covered by the prohibition against using people, though, because this prohibition only comprises duties of justice and thus 'introduces minimal, but indispensable, requirements for coordinating action in a world shared by autonomous beings'.[8] Duties of justice are what Kant calls 'Rechtspflichten' and are opposed to the so-called duties of virtue. While duties of virtue command that agents adopt ends or act according to maxims that are compatible with these ends, duties of justice only prescribe the performance or omission of certain types of actions. This distinction between duties of justice – or 'duties of right' as I called them – differs from Kant's further distinction between perfect and imperfect duties. Duties of justice form only a part of the wider category of perfect duties.[9] O'Neill therefore departs from Kant's understanding of the prohibition against using people merely as means as comprising all perfect duties. The scope of her prohibition is a little narrower and excludes duties towards oneself and duties of respect.

O'Neill explains her interpretation of the scope of the respective parts of the Formula of Humanity by pointing to the following passage from Kant's *Groundwork*:

> 'The man whom I seek to use for my purpose by such a (false) promise cannot possibly agree with my way of behaving to him, and so cannot himself share the end of action.'[10] (4:429)

It is the first part of this explanation of the wrongness of insincere promises, i.e. the idea of possible agreement, that helps O'Neill to define what it means to use somebody. The second part of the sentence – 'and so cannot himself share the end of action' – on the other hand, defines what it means to fail to treat someone as an end in itself. Whenever we violate a moral duty, be it one of justice, respect or love, we thus pursue a goal that our interaction partner cannot share. When we also treat him in a way with which he cannot agree, then we violate a duty of a specific class, namely a duty of justice, and thereby use him merely as a means. O'Neill therefore has a different understanding of Kant's remarks on consent than I did in the preceding chapter. She does not employ the idea of consent to show how we can *legitimize* the use of a person, but to define *what it means* to do so.

O'Neill does not need a device to distinguish between the permissible use and the impermissible use of people because for her it is always wrong to use another person. O'Neill does not follow Kant in his distinction between using and merely using a person and understands the concept of using people to be evaluative in all contexts. To use another person means to treat someone in a way she cannot agree with and this in itself makes the act wrong. This does not mean, of course, that it is wrong in O'Neill's eyes to use a taxi. It simply shows that she would not talk of 'using' with regard to such interactions, a hesitation that we also found in our common sense discourse.

According to O'Neill, the impossibility of consent is the defining feature of using a person. She is therefore very careful about how to understand the notion of consent and rules out two possible misunderstandings. One might understand the need for consent to require no more than asking our partner to say 'yes' or 'no' to the proposed interaction. But O'Neill sees two big problems in this naïve approach to the requirement for possible consent: First, it is unclear what can count as valid consent. In our culture the giving of consent is connected to certain forms of external behaviour such as signing a contract or saying 'yes' at some point in a ceremony. But not even all acts belonging to these clear and conventionalised categories can be counted as genuine or valid consent because the agent might not understand what he is doing, he might have been deceived about

what he is agreeing to or he might act involuntarily because he is coerced or threatened. Requiring morally significant consent must thus be more than asking for someone to nod or say 'yes'.

O'Neill's second problem is that we have to clarify what we must consent to. Every event can be correctly characterised by many different descriptions and it is impossible to require that our interaction partner must agree to all of them. Some aspects of an interaction seem to be generally irrelevant for morally significant consent as, for example, the exact time of the interaction, while others must surely be included. Imagine the following example:

Drug Dealer: A drug dealer wants to smuggle a bag full of drugs over the border. For this purpose he asks a tourist to carry the bag over the border for him and tells him that the bag contains pills for his sick mother.

This drug dealer cannot claim to have received the tourist's valid consent, for example, if he does not tell him that the bag contains illegal drugs. To tell him that he would be transporting illegal and harmful material is surely a relevant description of the proposed interaction. O'Neill therefore asks how we can determine which

descriptions are relevant and must be given when asking for consent.

To tackle the problem of the relevant act description O'Neill goes back to an idea she proposed ten years earlier with regard to a problem in applying the first formula of the Categorical Imperative. Kant's Formula of Universal Law requires that we act only in ways that can be thought of and wanted as universal laws. But to apply this Formula we have to refer to an act with some description and it is relevant for its universalizability which of these descriptions we choose. If we say, for example, that the protagonist of Nabokov's novella *The Enchanter* marries and cares for the mother in the story, we would expect the Categorical Imperative to render his action universalizable. If we say that he was treating her merely as a means, in contrast, we would all agree that the CI test procedure should prohibit his action. But how can we decide which of these different descriptions of the same action is relevant? O'Neill's answer to this question makes use of the concept of a maxim: It is the agent's maxim that is relevant to give a morally significant description of his behaviour. In O'Neill's interpretation, maxims are 'underlying principles, by which subsidiary aspects of action are governed and orchestrated'.[11] What is relevant for the evaluation of an act is thus not any possible description of the act we have to decide upon, but the description that guides us if we choose it. According to Kant, we think of all our real or potential acts in general terms that characterise them as an act of a certain type that I

perform with a certain end. We act according to subjective principles, i.e. according to what Kant calls a 'maxim'. O'Neill's solution to the problem of the relevant act description is therefore to suppose that the act description we have to consider is the description under which the agent thinks of the act himself. To apply the Formula of Universal Law we thus have to try to universalize the agent's maxim. And if we ask for the consent of our interaction partner to avoid the charge of using him merely as a means, we equally have to ask if he can agree to our *maxim*.

The second problem that O'Neill discussed with regard to the requirement for our interaction partner's consent was the question of what conditions have to be fulfilled for her consent to be valid. She might say 'Yes' to my offer without giving significant consent to our interaction because she did not know what she was agreeing to or because she was forced to do so. O'Neill answers the challenge of invalid consent by pointing to Kant's characterization of such examples as cases where our partner 'cannot possibly agree with my way of behaving to him'[12]. O'Neill emphasises that Kant speaks here about *possible* agreement and not only about the actual performance of some external behaviour that is usually associated with the giving of consent in our culture. Behaviour like nodding or saying 'Yes' only achieves moral relevance if it can express a genuine attitude towards the relevant act description, i.e. towards the agent's maxim. We thus have to determine under what circumstances an affirmative

act can be taken to express an affirmative attitude, i.e. under what circumstances genuine consent is possible and valid.

Before O'Neill presents her own solution to this question she rules out one misinterpretation of the idea of 'possible consent'. One problem with the naïve view that takes every actual sign of consent to have the 'magic' to transform a normative relationship is that it is insensitive to human agents' vulnerability. People who let a proposal through on the nod may be ignorant or confused; they may have been deceived or coerced. It thus seems plausible to understand valid consent to be the consent of an ideal being that is not vulnerable in the same ways. One can then understand the phrase 'it is possible to agree to her proposal' to mean that a *fully informed* and *completely rational* agent would indeed agree to it. This proposal has the merit of ruling out many problematic cases of solely deceptive or coercive agreements. A fully informed and rational tourist, for example, would not consent to the drug dealer's proposal. But this solution comes along with significant problems of its own. First, it would give us a justification for ignoring someone's actual consent 'in the name of higher and more rational selves'.[13] I might go around and tear cigarettes out of people's mouths, for example, and justify my rude interference by saying that rational people would not smoke.[14] It is also not clear how much a 'fully informed' person must know and how 'rational' she has to be for her consent to count as valid. Does she have to know all the details of an act and be able to reflect on all

possible act descriptions that follow? This omniscience is not only impossible among human beings; it is even hard for us to imagine how such an ideal agent would decide upon his actions. We thus have to construe our ideal agent a bit less ideal and to say what such an agent would look like just seems to be our original problem of fixing the circumstances for valid consent in a new form. The idea of *rational* consent therefore does not solve our problem.[15]

O'Neill offers a different interpretation of possible consent. The main condition for the genuine and valid consent of our interaction partners lies, according to her, in '*making* their consent or dissent *possible*, rather than in *what* they actually consent to or would hypothetically consent to if fully rational'.[16] To avoid the problem of overriding people's actual decisions in the name of ideal agents, O'Neill suggests that we understand valid consent to be independent of its content. She suggests instead that if somebody needs another person's genuine agreement he has to provide the circumstances for it. He must ask for consent, of course, but he also has to make sure that 'those closely involved or affected by a proposal […] can avert or modify the action by withholding consent and collaboration'.[17] In other words, he must go through a *procedure* that makes consent possible.

There are basically two disturbing factors that can undermine any procedure that pretends to achieve another person's agreement and

rob it of its morally transformative power:

> 'The victim of *deceit* cannot agree to the initiator's maxim, so is used [...]. Similarly with a maxim of *coercion*: victims cannot agree with a coercer's fundamental principle or maxim.'[18]

According to O'Neill, deception and coercion are methods of a kind that make it in principle impossible to consent to them. An agent who tries to achieve another person's valid consent must make sure that he gets to know this person's genuine attitude towards the proposed interaction and must therefore dispense with any deceptive or coercive means.

With these two solutions in mind we now get a full picture of O'Neill's understanding of using people: A uses B, in her account, whenever A treats B in a way that makes it impossible for B to consent to the maxim that A pursues in his interaction with B.

1.2 Korsgaard on possible consent

Although Christine Korsgaard developed her account of using people independently of Onora O'Neill, both accounts have much in common. They actually complement each other as both of them make explicit or clearer what has not been said in the other. While O'Neill is very careful in distinguishing different forms of consent and in elaborating the idea of a maxim that must be consented to, Korsgaard develops more clearly the idea of act types that make consent impossible.[19] Both fundamentally agree, though, that to use a person means to treat that person in a way that she cannot consent to. This impossibility of consent should not be understood in the sense that it would be irrational to agree to the interaction in question[20], but that the agent did not give his interaction partner a chance to express his genuine attitude. O'Neill and Korsgaard can thus both be said to defend a procedural account of using people[21] because they argue that to use a person means to fail to provide a fair procedure by which that person can shape her interactions with others.

Korsgaard and O'Neill furthermore agree that there are basically two kinds of action that interfere with the requirement to give people a chance to consent to a proposed interaction, namely coercion and

deception. Korsgaard makes it very clear in what sense it is impossible to consent to coercive and deceptive maxims:

> 'People cannot assent to a way of acting when they are given no chance to do so. The most obvious instance of this is when coercion is used. But it is also true of deception: the victim of the false promise cannot assent to it because he doesn't know it is what he is being offered. But even when the victim of such conduct does happen to know what is going on, there is a sense in which he cannot assent to it. Suppose, for example, that you come to me and ask to borrow some money, falsely promising to pay it back next week, and suppose that by some chance I know perfectly well that your promise is a lie. Suppose also that I have the same end you do, in the sense that I want you to have the money, so that I turn the money over to you anyway. Now here I have the same end that you do, and I tolerate your attempts to deceive me to the extent that they do not prevent my giving you the money. Even in this case I cannot really assent to the transaction that *you* propose. […] The nature of the transaction is changed. […] My knowledge of what is going on makes it *impossible* for me to accept the deceitful promise in the ordinary way.'[2]

Korsgaard argues here that it is impossible for a person to agree to a maxim of deception *for conceptual reasons*. If the plan that structures your behaviour is to deceive me to get some money, then it is conceptually impossible that I agree to it, because if I agree then I will not be *deceived*. The same is true for coercion. If I plan to get

rid of my debts by threatening the bank clerk with my gun to give me all the money from his cash-box, then he cannot consent to my coercive maxim, because I would not be *coercing* him if he agreed to it. Coercion and deception are thus act types that can never be consented to, because it is part of their meaning to circumvent the interaction partner's will.

Korsgaard's characterization helps her and O'Neill to ward off a criticism that has sometimes been levelled against their idea of possible consent. These critics argue that it is not only impossible for a deceived or a coerced agent to consent to a proposed interaction, but equally impossible for a comatose or unconscious person to agree to medical treatment. Korsgaard's and O'Neill's interpretation of the Formula of Humanity thus seems to imply the wrongness of helping unconscious people and this would certainly render their account implausible. But Korsgaard can easily reply to this objection that, whereas coercion and deception are methods that rule out consent conceptually, treating an unconscious person is neither a method to bring about an interaction nor is it incompatible with the unconscious person's agreement.[23] Korsgaard – and, I suspect, O'Neill – would argue that it is this conceptual impossibility that shows that something is fundamentally wrong with coercive and deceptive behaviour and renders any act of consent invalid. A person's consent can thus only be morally significant if the agent looks for this consent in a way that does not involve any means that

is conceptually incompatible with that person's genuine agreement.

Korsgaard also joins O'Neill in her thesis that Kant's prohibition against using people covers the class of all duties of justice. She argues that all perfect duties arise from our fundamental duty to recognize the value of each human being's capacity for autonomous choice. This duty has two aspects:

> 'We are not only forbidden to use another as mere means to our private purposes. We are also forbidden to take attitudes toward her which involve regarding her as not in control of herself, which is to say, as not using her reasons. This latter is the basis of the duties of respect. Respect is violated by the vices of calumny and mockery.'[24]

Whereas the perfect duties of the first kind, i.e. all duties not to use another person, belong to the realm of duties of justice, all duties of respect are duties of virtue. Korsgaard furthermore agrees that the second half of the class of duties of virtue is constituted by our imperfect duties of mutual aid and we thus again get a picture of morality as consisting of duties of justice, duties of respect and duties of love.[25] The prohibition against using people covers the first section of morality, i.e. all duties of justice. Its scope is thus significantly smaller in O'Neill's and Korsgaard's account than it is

in Kant's theory. It leaves out all duties of respect such as the prohibition of calumny and mockery.[26] Their proposal is therefore closer to the common sense notion that equally does not consider mockery, for example, to be a case of using people. It is still broader than the common sense notion, though, because I would be using a person, according to O'Neill and Korsgaard, if I insulted her out of jealousy and thereby violated a duty of justice. With regard to its scope, their revised account is thus in the middle between the original Kantian concept and our common sense notion.

2. The prohibition's roles

Kant's Formula of Humanity is intended to be the supreme principle of morality. We have already seen that Kant believes it to provide a decision-procedure, the reasons for which we should act and a scheme for the nature of moral obligation. In addition, the Categorical Imperative not only covers the categories of right and wrong, but also provides an ideal for individuals as well as for human society as a whole.

Onora O'Neill and Christine Korsgaard generally adopt Kant's ambitions, but sometimes lower them and sometimes give them a new form. Both stress that moral principles have to be action-guiding and believe the Formula of Humanity to be successful in playing this role. In her early book about the Formula of Universal Law O'Neill expresses her opinion, though, that Kant's theory of moral worth is very convincing, but that his theory of right is contestable.[27] In her paper on using people O'Neill changes her opinion and now argues that Kant's theory is primarily a theory of moral worth and that all judgements about what is right or wrong are only derivative.[28] The Categorical Imperative therefore does not provide a decision-procedure that leads directly to verdicts about the permissibility of outwardly characterised act-types, but can only be employed indirectly by adding information about the concrete context. As we have seen in the preceding chapter, the Formula of Universal Law as well as the Formula of Humanity prohibit and prescribe only *maxims* and not acts, so that 'judgements of what is obligatory (or merely permissible or forbidden) are made by reference to the outward aspects of action that *would have been required* (or compatible or ruled out) by acting on a morally worthy maxim in that situation.'[29] O'Neill believes, nevertheless, that Kant's Formulas can be very helpful in arriving at moral judgements in concrete situations and illustrates her claim with regard to examples from the areas of sexual relationships and employment conditions.

The prohibition against using people merely as means is understood by O'Neill and Korsgaard to include a special class of duties. The so-called duties of justice negatively constrain our behaviour towards others and determine the minimal requirements for living together in a shared world. But the role of the prohibition is not limited to marking the borders between one class of duties and the rest of morality in O'Neill's and Korsgaard's eyes. The prohibition actually has this limited role in the interpretation of Jens Timmermann, for example, who defines 'using persons merely as means' as 'violating their rights and interests'.[30] The prohibition against using people does not give us any reasons for action according to this interpretation, because the reasons are provided by the rights and the interests of persons. The prohibition only puts the duties that flow from these reasons together and provides a label for a special class of duties. This class is not held together by the same reasons for action, but by the particular strength of the duties it includes. O'Neill and Korsgaard, in contrast, believe that the prohibition against using people gives us the normative reasons that we should follow in action. They would argue that we shall not deceive and coerce other people *because* we would thereby use them merely as means. The prohibition thus has not merely a criterial, but also a justificatory role in the derivation of concrete duties. This does not mean, of course, that the prohibition does not *also* play the roles that Timmermann ascribes to it. It does indeed encompass a

class of duties and these duties are special for being stricter than other moral duties in O'Neill's and Korsgaard's eyes. They consider the prohibition to be absolute, as spelling out 'indispensable'[31] requirements, 'it must *never* be acted against'[32]. But the requirements have this strength for a uniform reason, namely because their violation makes the consent of interaction partners impossible.

Besides showing and justifying a class of strict duties, the prohibition against using people merely as means also has a role as a normative ideal in Kant's eyes. Although O'Neill and Korsgaard do not consider the cases that Kant discusses – rhetorics and selling one's hair – they agree that the prohibition provides an 'ideal'.[33] They understand this ideal function quite differently, though. O'Neill calls the prohibition an ideal, but she states at the same time that it introduces '*minimal'* and *'negative'* requirements[34] and thereby seems to transfer all more ambitious demands to the second part of the Formula of Humanity, the command to treat persons as ends in themselves. She still has some place for ideals and perfection with regard to the formula's first part, though, because she introduces the idea that not only individual agents but also social institutions can have maxims. Prostitution, for example, cannot be seen as a free interaction between consenting adults in our society because there are coercive maxims in the institutional context that often involves pimping and brothel-keeping.[35] Similarly there is often deception involved in employment relations, though it is 'deception without an

individual deceiver'.[36] Getting rid of these institutional forms of coercion and deception is not a duty of particular individuals, but a common task for society, and the progress in the abolition of such institutions will often be gradual. The aim of changing the institutions that follow objectionable maxims can thus be understood to be an *ideal* that follows from the prohibition against using people.

Korsgaard argues, in contrast, that the prohibition against using people merely as means is a moral principle that clearly sorts out certain forms of behaviour. It is even stricter than the Formula of Universal Law as it absolutely prohibits lying and suicide, for example.[37] O'Neill seems to understand 'ideals' to be aims that are morally desirable, but that cannot be reduced to individual duties of individual agents. The 'rigorism' that the prohibition against using people has in Korsgaard's eyes prevents it being understood as an ideal in this sense. Korsgaard says, nevertheless, that the prohibition is based on an 'attractive ideal of human relations'[38] because she understands it to be an ideal in the sense that we can only expect agents to comply with it under ideal circumstances, i.e. in a world where we do not have to deal with evil brought about by other agents.

3. Justifying the prohibition

Onora O'Neill does not tell us much about a possible justification for the prohibition against using people merely as means. She makes it clear, however, that she shares Kant's conviction that it is the autonomy of persons that lies at the heart of morality and points to the connection between autonomy and the prohibition against using people:

> 'Not to treat others as means introduces minimal, but indispensable, requirements for coordinating action in a world shared by autonomous beings, namely that nobody act in ways others cannot possibly consent to, so in principle precluding their autonomous action.'[39]

It is thus wrong to use a person because we thereby prevent or interfere with her acting autonomously. Korsgaard agrees with this strategy of justification, but is far more explicit about it. She analyses Kant's argument for the Formula of Humanity and provides a very influential constructivist interpretation of it. In contrast to O'Neill, Korsgaard refers directly to Kant's theory of value and looks there for a justification of the prohibition against using people.

What Korsgaard stresses most about Kant's theory of value is the discovery of the conditionality of most value. Many of the things that people deem valuable owe their value to something else. But not all value can be conditional and there must be something with unconditional or absolute value that is the source of all the conditional value in the world. This unconditional value can be detected in Korsgaard's eyes by Kant's analytic or regressive method, according to which an inquiry into the conditions of conditional value 'should lead us eventually to what is unconditioned'.[40]

The starting points for the search for unconditional value are usually things that we like or want. But if we reflect upon whether these things are absolutely valuable, we detect that their value depends on our valuing them:

> 'The objects of inclination are in themselves neutral: we are not attracted to them by their goodness; rather their goodness consists in their being the objects of human inclination.'[41]

The value of our objects of inclination is conditional as it depends on our liking or wanting them. But what about our inclinations themselves, can't they be seen as absolutely valuable? Korsgaard

argues that this cannot be true. Although she does not agree with Kant's statement that our inclinations are 'so lacking in absolute value that the universal wish of every rational being must be indeed to free himself completely from them'[42] (4:428), she sticks to the weaker thesis that *some* of our inclinations are even seen by ourselves as tiresome and odd. We only have to remember Frankfurt's clear-sighted drug-addict who hates himself for being drawn to drugs to confirm this line of argument.[43] What distinguishes habitual cravings from our 'good' inclinations is that we choose to act on the latter ones. The value of inclinations is therefore conditional too, because it depends on our choice to accept them as motives of action.

We have now arrived at the step that Korsgaard considers to be crucial. If we were asked what we consider valuable, we would give a list of our objects of desire and when asked what is valuable about them many of us will answer that they are valuable because we desire them. Korsgaard's considerations have shown, though, that we can take neither our objects of desire nor our desire itself as unconditional sources of value. The same considerations have shown, on the other hand, that there is one candidate left for the source of value:

> 'Since we still *do* make choices and have the attitude that what we choose is good in spite of our incapacity to find the unconditioned condition of the object's goodness [...], it must be that we are supposing that rational choice itself *makes* its object good. […] Rational choice has what I will call value-conferring status.'[44]

According to Korsgaard, all value in the world comes about by the transferral of value from rational choices to objects and events. People do not, in general, reflect upon this conferral of value, but we all act as if our rational choice had this power. The attitude that our choices are sources of value is 'built into rational action'.[45]

In his Formula of Humanity Kant demands that we treat humanity as an end in itself and never merely as a means. As I mentioned in the preceding chapter it is natural to understand 'humanity' to refer to the class of all human beings in this context. But Korsgaard points to Kant's remark that 'the power to set an end – any end whatsoever – is the characteristic of humanity'[46] and understands him to mean that we should treat *our capacity to set ends* [47]as an end in itself and never merely as a means.[48] With this interpretation in mind, we can see how Korsgaard links her understanding of the prohibition against using people with her justification of Kant's formula: Rational choice is the source of all value and it would therefore be irrational to undermine this source of value by employing methods to secure

interaction with other rational beings that are incompatible with the use of this capacity. One fundamental way of using our capacity to set ends is to *consent* to the interactions that others propose to us. Deception and coercion prevent us from consenting as they are conceptually incompatible with consent. This consideration therefore prohibits all kinds of deception and coercion as these forms of interaction pursue conditionally valuable goals by preventing the use of a capacity that is the source of these very goals.

Korsgaard thus offers a solution to the problem that we detected in Kant's account, namely of determining how we get from the idea of humanity as an end in itself to concrete moral duties. She understands 'humanity' as referring to our rational capacities and thus interprets the Formula of Humanity as prohibiting the obstruction of these capacities. Our rationality manifests fundamentally through determining the course of events by assenting to other people's proposals for interaction. All methods that try to bring about an interaction by circumventing this capacity to consent are thus wrong according to Korsgaard's account. But this attractive solution comes with significant problems of its own.

4. Problems

A first problem for O'Neill's and Korsgaard's account becomes obvious when we compare their definition of the prohibition against using people with their claim that it covers all duties of justice. They understand all interactions that come about through methods that are conceptually incompatible with the free consent of their interaction partners to be cases of using people. This reading of the prohibition is neatly illustrated with regard to coercion and deception. A person who is deceived or coerced cannot assent to the interaction, because a maxim such as 'I will deceive you to get some money' cannot be realised when the interaction partner consents to it. It remains unclear, however, if there are any more methods that similarly rule out consent conceptually. I think one more such method can be seen in how the protagonist of Nabokov's novella *The Enchanter* plans to abuse the girl:

> 'We shall live far away, now in the hills, now by the sea, in a hothouse warmth where savage-like nudity will automatically become habitual, perfectly alone (no servants!), seeing no one, just the two of us in an eternal nursery, and thus any remaining sense of shame will be dealt its final blow. There will be constant merriment, pranks, morning kisses, tussles on the shared bed […].Yet, precisely because during the first two years or so the captive would

> be ignorant of the temporarily noxious nexus between the puppet in her hands and the puppet-master's panting, between the plum in her mouth and the rapture of the distant tree, he would have to be particularly cautious, not to let her go anywhere alone, make frequent changes of domicile (the ideal would be a mini-villa in a blind garden), keep a sharp eye out lest she make friends with other children or have occasion to start chatting with the woman from the greengrocer's.'[40]

The enchanter does not really try to coerce or deceive the girl, but his disgusting method seems equally incompatible with the girl's free consent. *Manipulation* might be a good name for this kind of forming people for one's own ends. Manipulation makes consent impossible and can therefore be easily integrated into O'Neill's and Korsgaard's framework. But are there any more methods? If not, then O'Neill and Korsgaard have to be able to describe all duties of justice as cases of coercion, deception or manipulation. Some cases raise a problem for this project: Imagine a husband who kills his wife out of jealousy, remember the car driver who shouts abuse at a cyclist or think of a sniper who randomly shoots at a crowd. I think it is clear that these agents violate moral constraints on how we interact with other people and thus violate duties of justice. It seems implausible, though, to describe their wrongs as coercion, deception or manipulation. O'Neill and Korsgaard therefore cannot satisfy their claim of characterising all duties of justice.

The following reply might seem to be open to O'Neill and Korsgaard: Although it is not usual to call examples like those described above cases of coercion, it is not too great a widening of natural language to say that these cases all involve some form of brute force and are therefore coercive in character. This not unusual widening of natural language[50] is not available to O'Neill and Korsgaard, though. To kill a person intentionally or to shoot randomly at a crowd can be described as coercive actions, perhaps, but such use of brute force is *not conceptually incompatible* with the consent of the interaction partners. When O'Neill and Korsgaard argue that coercion follows maxims that cannot be assented to, they have *coercive proposals* in mind and their analysis only works with this form of coercion. If they expand the notion of coercion to comprise the use of *brute force* as well, then they can no longer claim that coercion is generally incompatible with the consent of their interaction partners. It is unlikely that my wife will agree to my killing her out of jealousy, but it is not conceptually ruled out.[51]

A second problem results from O'Neill's and Korsgaard's absolute understanding of the prohibition against using people merely as means. It is always wrong, according to this understanding, to coerce or deceive other people, but this leads us to the notorious murderer at the door: In his short essay *On a Supposed Right to Tell Lies from Benevolent Motives* Kant defended the view that we never have a right to lie to others even if we know that the person we lie to wants

to kill one of our friends and knocks at our door asking where this friend is. The implausible verdict that even here it is wrong to deceive intentionally seems to be a consequence of O'Neill's and Korsgaard's account and, arguably, also of Kant's own theory. Korsgaard will answer this objection, though, by pointing to her interpretation of Kantian ethics as a 'double-level theory': Kant provides rules for an ideal and for a non-ideal world simultaneously, according to this interpretation, and Korsgaard considers the prohibition against using people merely as means as belonging to the ideal part of the theory. This implies that it would always be wrong to lie in an ideal world, but that it is allowed in our world, because in this world we have to deal with 'circumstances of very great natural or moral evil'[52] such as murderers at our doors.

This interesting reply does not solve the problem entirely for Korsgaard, though, as there are also benevolent lies of the following sort:

Christmas: In December Ron and Jill are doing some shopping. Jill gets enthusiastic about a scarf but doesn’t buy it. Half an hour later Ron pretends that he forgot something. But in fact he goes back to the shop and buys the scarf as a Christmas present for Jill.

Ron deceives Jill by telling her that he forgot something, but he is clearly not doing anything wrong. Moreover, it is not convincing to argue that Ron's deception is only a means to deal with evil in a non-ideal world. Even an ideal world may contain Christmas presents.

Korsgaard might reply to this objection that it is bad philosophy to try to argue against an otherwise plausible theory by pointing to one isolated example that it is not compatible with it. Some examples are easily recognizable as exceptions and should not be used as arguments. This methodological consideration may seem to be correct with regard to surprises such as presents or parties that can be regarded as mere exceptions from otherwise valid rules. I am very sympathetic to this kind of argument, but it does not save O'Neill and Korsgaard. Look at the following case, similar to one presented by Derek Parfit[53]:

Sacrifice: You are diving with a friend under water at considerable depth and you notice that your friend's oxygen cylinder is leaking. You know that the oxygen that is left in your cylinder will only suffice for one person. You therefore swap the cylinder with your friend and tell him that you want to stay a little longer and that he should return to the boat first. You stay with his almost empty bottle and await death.

This is another example of a benevolent lie, but this example does not involve any special social institution such as gift-giving or surprise parties. It therefore shows that the plausibility of *Christmas* and other such examples does not merely hinge on rare and special circumstances. There are diverse cases of benevolent deceptions and a moral theory should avoid the implication that all deceptions are morally wrong.

My third objection is aimed at Korsgaard's strategy of justifying the categorical imperative. Korsgaard managed to establish a relation between the scope of the prohibition against using people – at least if we take this scope to comprise coercion and deception and nothing else – but this relation does not sound plausible to me. If the mother in Nabokov's novella *The Enchanter* were to find out what the enchanter was planning to do with her, she would complain, according to Korsgaard's account, that he did not recognize the value of rationality and thus undermines the source of all value. But it does not seem likely that this is what she will criticise. It is much more likely that she will be disgusted about his disrespecting *her* – not to mention his plans with regard to her daughter. Korsgaard does not seem to be able to take this kind of indignation into account. To be sure, the justification that a moral theory offers for its principles will very often differ from the justifications that people would give when

asked why they are angry or indignant. But Korsgaard's justification seems to differ *in kind* from anything that people might consider as a possible rationale for their moral feelings. The wronged party in Korsgaard's justification is ultimately rationality as an abstract entity. She cannot be talking about the rational capacities of individual persons, because nobody's individual capacities are the source of value of all other things. Korsgaard's argument for the value of humanity only works with regard to rationality per se and I cannot see how we get from this abstract entity to the reasons that we come up with when we criticise the wrongs done to individual persons.

Notes

1W.D. Ross tells us, for example, that Kant's Formula of Humanity is the 'the most popular part of his theory' and points to the ethical theory of Thomas Hill Green. Cf. William David Ross, *Kant's Ethical Theory - A Commentary on the Grundlegung zur Metaphysik der Sitten* (Oxford: Clarendon Press, 1969), p.53.

2An even earlier source of the new interest in Kant's Formula of Humanity is Mary Gregor, *Laws of freedom. A study of Kant's method of applying the categorical imperative in the Metaphysik der Sitten.* (Oxford: Blackwell, 1963).

3See Thomas Nagel, “War and Massacre,” *Philosophy and Public Affairs*, 1972; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); Ronald M Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977); J.J.C. Smart and Bernard Williams, *Utilitarianism for and Against* (London: Cambridge University Press, 1985).

4Thomas Hill presented his interpretation of Kant's Formula of Humanity in 1980, but his approach is an exegetical one. Hill himself claims to present Kant's own unpopular view of using people. Cf. Thomas Hill, “Humanity as an End in Itself,” *Ethics* 91, no. 1 (1980): p.84. I will nevertheless discuss Hill's account in chapter 6 of this book.

5Onora O'Neill, “Between Consenting Adults,” *Philosophy and Public Affairs* 14, no. 3 (1985): p.252.

6Ibid., p.264.

7Ibid., p.265.

8Ibid., p.263.

9Whereas perfect duties prohibit actions *or maxims*, duties of right always prescribe the performance or omission of certain types of *actions*.

10Ak. 4:429.

11Ibid., p.261.

12Ak. 4:429.

13Ibid., p.257.

14That smoking is indeed irrational was argued by David Velleman, cf. David Velleman, “A Right of Self-Termination?,” *Ethics* 109, no. 3 (1999). He promised not to bother peaceful smokers, though.

15O'Neill, “Between Consenting Adults,” p.257-258.

16Ibid., p.259. The first and the third emphasis are mine.

17Ibid., p.259.

18Ibid., p.262, my emphasis.

19Korsgaard actually uses different expressions to characterise the prohibition against using people, expressions that arguably differ in content. Korsgaard says, for example, that 'whenever you use a method that works only because others do not use it [...] you make an instrument of the rational nature of others, and treat them as mere means'. Cf. Christine Korsgaard, “Kant's Formula of Humanity,” *Kant-Studien* 77, no. 1 (1986): p.199; this characterisation seems to differ significantly from the understanding I explored so far, but I ignore such alternative characterisations and only present the account that I find most convincing and most consistent with Korsgaard's overall theory. For an interpretation and critique of Korsgaard's alternative expressions, cf. Derek Parfit, “On what matters - unpublished manuscript” (July 2009): pp.141 and 176-177.

20Christine M. Korsgaard, “Two arguments against lying,” *Argumentation* 2, no. 1 (February 1, 1988): pp.348-349.

21Korsgaard is explicit about the procedural character of her account. Cf. Ibid., p.349.

22Christine M. Korsgaard, “The Right to Lie: Kant on Dealing with Evil,” *Philosophy and Public Affairs* 15, no. 4 (Autumn 1986): p.332; see also Korsgaard's remark that deception rules out consent 'by the nature of the case', cf. Korsgaard, “Two arguments against lying,” p.347; and O'Neill's insistence that 'if we coerce or deceive others, their dissent, and so their genuine consent, is in principle ruled out', cf. O'Neill, “Between Consenting Adults.”

23This reply by Korsgaard has been suggested by Parfit, “On what matters -

unpublished manuscript," pp.139-140; and by Samuel Kerstein, "Treating Others Merely as Means," *Utilitas* 21, no. 2 (2009): p.174.

24Korsgaard, "The Right to Lie," p.335.

25Korsgaard differs from O'Neill, though, in characterising the prohibition against using people by both expressions - 'cannot possibly assent' and 'cannot contain the end of this action in himself' - that Kant uses in applying the Formula of Humanity in the Groundworks (Ak. 4:429). O'Neill understands the latter expression as a characterisation of the requirement to treat all persons as ends in themselves. Cf. Korsgaard, "The Right to Lie," p.331; and O'Neill, "Between Consenting Adults," p.261-262.

26Whereas O'Neill does not consider duties to oneself as violations of the prohibition against using people, Korsgaard includes at least the prohibition of suicide, cf. Korsgaard, "Kant's Formula of Humanity," p.198. Suicide is considered by Kant to be a duty of justice as well as a duty of virtue so that Korsgaard can maintain her general thesis that the prohibition against using people covers all and only duties of justice.

27Onora O'Neill (Nell), *Acting on Principle. An Essay on Kantian Ethics* (New York, NY: Columbia University Press, 1975).

28O'Neill, "Between Consenting Adults," p.267.

29Ibid., p.268, my emphasis.

30Jens Timmermann, *Kant's Groundworks of the Metaphysics of Morals* (Cambridge: Cambridge University Press, 2007).

31O'Neill, "Between Consenting Adults," p.263.

32Korsgaard, "Kant's Formula of Humanity," p.198.

33See, for example, O'Neill, "Between Consenting Adults," p.252; and Korsgaard, "The Right to Lie," p.327.

34O'Neill, "Between Consenting Adults," p.263, my emphasis.

35Ibid., p.268.

36Ibid., p.274.

37Korsgaard, “The Right to Lie,” p.347.

38Ibid., p.327.

39O'Neill, “Between Consenting Adults,” p.263.

40Korsgaard, “Kant's Formula of Humanity,” p.192.

41Ibid., p.195.

42Ak. 4:428.

43Cf. Harry Frankfurt, “Freedom of the Will and the Concept of a Person,” in *Free Will*, ed. Gary Watson (Oxford: Oxford University Press, 1982); see also Adrienne Martin, “How to argue for the value of humanity?,” *Pacific Philosophical Quarterly*, 2006 for a reading of Kant in Frankfurt's spirit.

44Korsgaard, “Kant's Formula of Humanity,” p.196.

45Ibid.

46Ak. 6:392.

47There is a big debate as to what rational capacities should be included under the heading of 'humanity'. Some argue, for example, that Kant had only our moral capacities in mind, while most interpreters, like Korsgaard, assume that Kant meant a group of capacities that include our non-moral rational capacities as well. Cf. Lara Denis, “Kant's Formula of the End in Itself: Some Recent Debates,” *Philosophy Compass*, 2007. I will not enter into this debate and I use the expressions 'rationality' or 'rational capacities' with a wide scope. These terms are meant to include in particular the capacities that are often referred to by the word 'autonomy'.

48Korsgaard 1986, p.187.

49Vladimir Nabokov, *The Enchanter* (London: Penguin Classics, 2009), p.42-43.

50Examples of this wide understanding are Michael Bayles, “A Concept of Coercion,” in *Nomos XIV: Coercion*, ed. Roland Pennock and John Chapman (Chicago: Aldine-Atherton, 1972), 16-29; and Grant Lamond, “Coercion, Threats, and the Puzzle of Blackmail,” in *Harm and Culpability*, ed. A.P. Simester and A. T Smith (Oxford: Clarendon Press, 1996), 215-238; coercion is already restricted

to coercive proposals in O'Neill's and Korsgaard's sense by Robert Nozick, “Coercion,” in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, ed. Sidney Morgenbesser, Patrick Suppes, and Morton White (New York: St. Martin's Press, 1969), 440-472.

51It might seem that O'Neill and Korsgaard could react by appealing to some other form of impossibility, one that does not cover conceptual contradictions, but all cases that are 'unlikely'. But then they have to confront the old problem of showing that it is not unlikely that an unconscious person agrees to a medical treatment. This is a problem for O'Neill and Korsgaard as they cannot say that the person's consent is indeed likely because she has good reasons to agree. They cannot give this plausible answer, as it is a version of the rational consent account that both explicitly reject.

52Korsgaard, “The Right to Lie,” p.347.

53Parfit's example is called Desperate Plight, cf. Parfit, “On what matters - unpublished manuscript,” p.217.

V An Attitudinal Account of Using People

Attitudinal accounts of using people do not simply argue that to use a person is to have an attitude. They assume, though, that to have some kind of attitude is part of the meaning of this expression. Furthermore, they believe that this relation with an agent's attitude prevents the expression being thought of as providing a reason for the wrongness of acts. The accounts that understand the expression as the ascription of an attitude are therefore mostly negative in character. Its main representatives, Derek Parfit and Thomas Scanlon, primarily present arguments against the procedural account of using people. Their positive statements about the attitude they believe to be expressed give a direction but still await elaboration.

1. Parfit on means and attitudes

Derek Parfit rejects O'Neill's and Korsgaard's account of using people, partly for the reasons presented in the following chapter. He

adds the further and more general objection that their account misrepresents the role that the idea of merely using people actually has. He believes that the phrase 'merely as a means' has an ordinary sense 'that is fairly clear and, morally significant'[1] and that Kant aimed to capture this ordinary sense in his moral theory. O'Neill and Korsgaard fail to do justice to the notion's ordinary sense, because they employ it to spell out an absolute side-constraint on human actions. The common concept of using people is not able to fulfil this role and therefore does a bad job when employed in this way. According to Parfit, the concept itself is a good actor, but O'Neill and Korsgaard cast it badly.

For a sentence of the form 'A uses B merely as a means' to be true, two conditions must be fulfilled in Parfit's analyses. First, A must *use* B, i.e. A must make any use of B's abilities, activities, or other features to help him to achieve some aim.[2] Second, A must *regard* B as a mere tool, i.e. he ignores B's wellbeing and moral claims and would treat B in whatever ways would best achieve his ends. Sentences of the above type thus express hybrid assertions reporting an act and ascribing an attitude at the same time. Parfit then asks if an act that fits this definition can be said to be morally impermissible *because* it fits it. He thus asks if the concept of using people as he understands it can fulfil the role it was suggested to play by O'Neill and Korsgaard. He comes to a negative conclusion. As a first step in his argument Parfit looks at his own definition of

the expression 'A uses B merely as a means'. An utterance of this expression reports an act and ascribes an attitude at the same time. If we look at the act description alone – 'A uses B' – we see that it cannot provide a reason for this act's wrongness because many uses are morally permissible, as, for example, when I use you as a ladder by standing on your shoulders.[3] If we then turn to the attitude – 'A regards B as a tool' – we equally have to conclude that it does not render any act wrong. A gangster, for example, might regard most other people as mere tools and be willing to injure them whenever it benefits him. But when a gangster with this attitude enters a coffee shop and buys a cup of coffee in the way most of us do because stealing is not worth the trouble this time, he may regard the coffee seller merely as a means, but he does not act wrongly.[4] Both conditions of Parfit's analysis of the expression 'A uses B merely as a means' therefore do not give us reasons that explain the wrongness of acts. Neither do both conditions taken together, i.e. when a person is used *merely* as a means, as the following somewhat artificial example is meant to illustrate:

Gangster in wreckage: The gangster and his child are trapped in slowly collapsing wreckage, which threatens both their lives. The child is the only being the gangster really cares about. He cannot save the child's life except by using another person's body as a shield

in a way that will hurt the other person slightly. The gangster has, of course, no problem with using this person. He does so and thereby saves his child. The other person is fine except for a few scratches.[5]

The gangster in this example fulfils all the conditions for using a person merely as a means: He uses the other person and he regards him as a mere tool. Parfit argues, though, that intuitively speaking the gangster does nothing wrong. We actually have to accept this verdict, it seems, if we agree that we would not blame a mother who is morally “normal” and does the same for her child. If we share Parfit's intuitions, we then have a case where a person is used merely as a means, but the agent does nothing wrong. The fact that anyone uses another person merely as a means therefore cannot be the reason for the act's wrongness.

Parfit's argument and his examples invite many further questions. Above all, one may suspect that Parfit's conclusion hinges on his particular definition of what it means to use a person merely as a means. It is not obvious that using people always involves the attitude that Parfit calls 'to regard a person as a tool'. But Parfit can actually admit that there may be better definitions of the phrase 'to use someone merely as a means'. He has to insist, though, that all definitions of the phrase will involve a reference to some attitude. Parfit argues for this conclusion by pointing to two features of our

common sense concept. First, the relation between saying that A uses B merely as a means and the wrongness of acts is a gradual one. Parfit discusses the example of a slave-owner who allows his slaves to rest during the hottest hour of the day.[6] Such a person certainly uses his slaves merely as means, but he cannot be said to ignore his slaves' wellbeing *completely*. Other slave owners may be even more 'generous' and grant their slaves two hours of rest or care about decent food and shelter. All these people merely use their slaves, but they do so in different degrees. According to Parfit this is due to the fact that they all have the same attitude and differ only in its strictness.

That the mere use of a person is always related to an agent's attitude can furthermore be seen in the fact that the sentence 'On this occasion, in acting as he did, he treated her merely as a means' sounds unnatural and its content is unclear.[7] The unnatural air of this sentence reveals that the expression 'he treats her merely as a means' does not refer solely to a single act, but is made true partly by how the agent would act in counterfactual situations. Parfit makes this clear by comparing two scientists, both of whom use laboratory animals in their research and employ the method that is most effective with regard to the knowledge they wish to acquire. As a matter of fact this method causes their animals no pain. But whereas the first scientist *would* use another method, if the first method *did* cause pain, the second would use it whatever happened to the

animals. Parfit argues that we would say that the second scientist, but not the first one uses the animals merely as means. As both scientists in fact perform the same acts our use of the expression must depend on counterfactual features and thus expresses 'our underlying attitudes and policies'.[8]

Parfit tries to show by his examples that the particular attitude that he calls 'to regard a person as a mere tool' cannot render an act wrong. But he thereby also suggests two general arguments against the thesis that attitudes can be relevant to the wrongness of acts. The first one refers to the notion of degrees of use. All the slave-owners mentioned above seem to come *sufficiently close* to a strict attitude to deserve our blame. In many other cases of using people it will be unclear, though, if the act in question is wrong because it is unclear how close is *close enough* to the mere use of a person. It follows that when we call someone's behaviour 'wrong' for being the mere use of a person 'this kind of wrongness is a matter of degree'[9]. But then it is a peculiar kind of wrongness and is not the kind of wrongness we are talking about when we ask if someone's behaviour is *permissible*. Permissibility cannot be a matter of degree, because 'permissible' and 'impermissible' form a pair of contradictory opposites without a grey area in between.[10] Parfit concludes that the statement 'A uses B merely as a means' does not give a reason for the wrongness of acts in the relevant sense.

Parfit's second argument refers to the counterfactual implications of the statement that A uses B merely as a means. He argues that if we ascribe an attitude to a person, we make a dispositional statement in the form that if an event of a certain kind takes place, this person will react in a certain way under adequate circumstances. We may sometimes justify this statement with regard to one particular event, but we believe that we are making a claim about other future or merely possible situations as well. All attitude ascriptions imply counterfactual assumptions. But the question of whether an act is wrong, must depend on how we *really* act in this particular situation and cannot depend on how we would act in some future or merely possible situation. The wrongness of an act therefore cannot depend on the attitude of the agent.

If we follow Parfit's arguments thus far, he has already shown what he wanted, namely that the fact that A uses B merely as a means cannot explain the wrongness of A's act. But Parfit considers a further objection to his account. He admits that one may criticise that his account cannot be right and point to examples such as the following one:

Bridge: A driverless, runaway train is heading for a tunnel. In the tunnel five people are working who will be killed if the train runs on. Person A is a bystander and has only one chance to stop the

train: There is one other person B standing on a bridge above the track. A opens a trap-door, so that B falls in front of the train and triggers its automatic brake.

Parfit's critics may argue that A clearly uses B merely as a means and that this would still be the case if A were willing to jump in front of the train himself if he were in a position to do so. The question of whether A uses B merely as a means therefore must be independent of A's attitude. Parfit answers these critics by saying that they confuse two different moral principles: The *Mere Means Principle* claims that it is wrong to treat anyone merely as a means or come close to doing that. Parfit has already tried to show that this principle is false. The principle that we are actually applying in judging cases like *Bridge* is the *Harmful Means Principle* according to which it is wrong to impose harm on someone as a means of achieving some aim. Parfit does not seem to reject this second principle. The confusion of the two principles is possible because of the double meaning of the word 'means' that I mentioned in the third chapter. The word 'means' can be used with regard to events or with regard to individual objects. Our studying law can be our means of becoming a lawyer or a racket can be our means of playing tennis. When we say 'A uses B merely as a means' we might mean that A really treats *the other person B* merely as a means or we might want

to say that *A's interaction with B* is a means to achieve some further aim. The sentence in the first sense ascribes an attitude to A and is the basis of the *Mere Means Principle.* The sentence in the second sense becomes relevant when the interaction is harmful and we ask ourselves if A's end justifies the harmful means. This idea is the basis of the *Harmful Means Principle* and is independent of the agent's attitude. When people say that in *Bridge* A uses B merely as a means they really mean that *A's interaction with B* is a means – arguably an unjustified one – to save the five workers. They do not mean that A treats *the other person B* merely as a means as this would always involve a statement about A's attitude towards B.

Parfit rejects O'Neill's and Korsgaard's claim that Kant's prohibition against using people merely as means plays a criterial and explanatory role in our judgements about the wrongness of acts. Parfit believes instead that Kant's prohibition is a prohibition of attitudes that guides our judgements about the moral quality of agents or the moral worth of their acts, but not about any act's wrongness. That does not mean that Parfit finds Kant's theory useless as a theory of right and wrong.[11] Parfit accepts a principle from Kant that is not really part of the Formula of Humanity, but taken from remarks that Kant makes about the application of the Formula, actually the same remarks that O'Neill and Korsgaard find most important:

> 'He whom I want to use for my own purposes with such a promise cannot possibly agree to my way of treating him' (4:429-430)

We have seen already that O'Neill and Korsgaard understand this passage to say that we should not employ methods in our interaction with others that conceptually preclude their agreement. Both argue that we shall not understand the words 'possibly agree' in the sense of 'could agree if perfectly informed and rational' as this would legitimize our ignoring the autonomous will of concrete individuals. Parfit proposes an interpretation of the term that comes close to the understanding that O'Neill and Korsgaard reject:

> 'It is wrong to treat people in any way to which they could not rationally consent in the act-affecting sense, if these people knew the relevant facts, and we gave them the power to choose how we treat them.'[12]

Parfit believes this principle to play the same roles that O'Neill and Korsgaard ascribe to the Formula of Humanity: It plays a criterial and an explanatory role in determining the wrongness of acts and it furthermore provides an ideal for our relations with other human beings.[13]

2. Scanlon's development of Parfit's account

Even if we accept all of Parfit's manoeuvres to defend his account, some serious problems remain. Thomas Scanlon's theory of using people refers to Parfit's account at several points and improves some of its shortcomings. I therefore want to present it by considering various objections to Parfit and by showing how Scanlon tries to solve them.

2.1 Kant and common sense

Parfit claims to present an idea of using people that we can find in common sense as well as in Kant's moral theory. This claim is very ambitious, especially in view of the fact that the common sense account and Kant's account differ significantly, as we have seen. But Kant does indeed accept various elements from common sense and claims to present an account that reflects the 'popular moral wisdom'[14] and is close to 'sensation and emotion'[15]. O'Neill and Korsgaard similarly believe that they present an intuitive *and*

Kantian account and it does not come as a surprise that Parfit makes this claim as well. But whereas common sense, Kant, O'Neill and Korsgaard all believe that the idea of using people can help us to explain the wrongness of acts, it is this very role that Parfit says it cannot play. He argues instead that the idea of using people provides us with an ideal of how human beings should *regard* one another. The ascription of this new role makes it very hard for Parfit to continue to claim that he presents an account that fits both common sense and Kant's Formula of Humanity. Scanlon, in contrast, distinguishes quite clearly between Kant's account and the common sense concept of using people. He stresses that Kant considers his Formula of Humanity as stating the *fundamental* principle of morality, whereas 'the charge, “You were just using me!” has particular moral force, and it seems appropriate in response to some wrongs but not to others.'[16]

Although Scanlon criticises several aspects of Kant's moral theory – especially the idea of the value-conferring status of rational choice that Korsgaard ascribes to Kant[17] – he nevertheless believes that Kant's Formula of Humanity can be read as a plausible, very general moral principle. Scanlon adapts Kant's distinction between conditional and unconditional *value* and argues that it can be understood as mainly distinguishing between derivative and non-derivative *reasons*. Some entities in the world are genuine sources of reason, i.e. they provide us directly with reasons for action. Some

other entities provide us with reasons only derivatively, 'that is to say only insofar as the reasons are provided by something else'[18]. Rational beings are non-derivative sources of reasons, but not in the sense that they create reasons through their rational choices, according to Scanlon, but in the sense that they give us reasons to restrict our behaviour towards them. We have to see rational beings as genuine sources of such reasons and we have to avoid all actions that are 'incompatible with the idea of rational beings as ends in themselves'[19]. Scanlon does not present an argument, but he tells us that this restriction basically means that we should 'act only in ways that others could not reasonably refuse to authorize'. He believes that this general idea plays 'a fundamental role in our moral thinking' and is the common basis of the moral principles proposed by Kant, by Derek Parfit and by Scanlon himself.[20]

So far Scanlon's proposal does not seem to differ much from O'Neill's and Korsgaard's general interpretation of Kant's Formula of Humanity. All three believe that Kant offers an attractive moral principle that is based on a distinction between different kinds of values and that requires respect for another person's authority to refuse an interaction. One first difference consists in Scanlon's understanding of this authority. Whereas O'Neill and Korsgaard stress the authority of the individual and imperfect person, Scanlon joins Parfit in requiring rational consent for an interaction to be legitimate. A second difference becomes apparent if we look at the

roles that the general moral principle is meant to play. Scanlon characterizes this role in the following way:

> 'The various formulas I have just mentioned characterize, in a very abstract way, the distinction between permissible and impermissible action.'[21]

Kant's Formula of Humanity, Parfit's Consent Principle and Scanlon's Contractualist Formula thus tell us what it is to say that an act is wrong or impermissible. This sounds like they are aiming at a definition of the word 'wrong'. But Scanlon makes it clear in his earlier book *What we owe to each other* that this is not what he means:

> 'People who hold noncontractualist views about moral wrongness would agree with contractualists that to call an action morally wrong is to say that it violates important standards of conduct and is therefore open to serious criticism. Perhaps this much is part of the meaning of these terms. But holders of these different views disagree about what these standards are and about what it is that makes them authoritative.'[22]

Scanlon expects a moral theory to characterize the property of moral wrongness, but not as a definition of the word 'wrong'. A common meaning of the word must be presupposed to understand all these theories as theories of the same thing. What the theories quarrel about is the 'sense', 'nature' or 'essence' of wrongness.[23] This essence comprises the standards of wrongness and their authority. Now, the expression 'standards of wrongness' might be understood as looking for the properties that make acts wrong. The general accounts of morality would thus presuppose a common meaning of 'wrong', but they would differ with regard to the conditions under which actions have that property. But this is also not what Scanlon is expecting of a general account of morality:

> 'While one aim of my contractualist account is to give a general criterion of wrongness that explains and links these more specific wrong-making properties, this is not the only, or even its chief, aim. It also aims to characterize wrongness in a way that makes clear what reasons wrongness provides, and this aim goes beyond saying ‚what makes acts wrong,' at least on the most natural reading of these words. [...] It therefore seems to me that contractualism and these other views are better described as rival accounts of the property of moral wrongness itself, rather than as differing accounts of the conditions under which actions have that property.'[24]

Scanlon sees himself as being in disagreement with other moral theories with regard to the question of how wrongness provides reasons for action and what kinds of reasons these are. He does not believe that these theories give a list or a procedure to detect the reasons that make acts wrong and he does not offer such a list or procedure himself. The roles of moral theory considered by Scanlon are rather similar to the roles that I have so far called the 'criterial' and the 'transcendental' role of moral principles. He thus offers – and believes Kant and Parfit to offer – 'a characterization of certain standards by which […] the rightness and wrongness of actions should be judged'[25] and an explanation of why the property of being wrong provides a reason for omitting certain acts. A general moral principle does not directly offer us the properties that make acts wrong and therefore plays no direct explanatory role. But such a principle 'explains and links these more specific wrong-making properties' and thereby *indirectly* influences our view of what makes our actions right or wrong.

With the help of these considerations we now see a further point of disagreement between Scanlon and Parfit on the one hand and O'Neill and Korsgaard on the other. Whereas O'Neill and Korsgaard believe Kant's Formula of Humanity to provide reasons for action directly, Scanlon and Parfit deny that this formula can play such an explanatory role. Scanlon is more generous in his judgement about the possible tasks for Kant's Formula, though, when he argues that it

can play a criterial and a transcendental role.

2.2 Attitudes and reasons

I have defended Parfit against the charge that his arguments depend entirely on his particular definition of the phrase 'to treat someone merely as a means'. His arguments have some force against all accounts that take this phrase to express an attitude. But it is not clear that attitudinal interpretations of this phrase and related expressions are the most convincing ones. Parfit's evidence for the attitudinal interpretation is the presumed observation that it is unnatural to say 'On this occasion, in acting as he did, he treated her merely as a means'[26]. This hypothesis about natural language has some plausibility if we take into account the further observation that using people typically takes place within relationships of some length and not only through singular interactions, as is the case with the enchanter who marries the woman to obtain custody over her daughter or with the young woman who dates a man in order to become pregnant by him. But Parfit's general thesis is nevertheless wrong. Imagine the following example:

Drug Dealer: A drug dealer wants to smuggle a bag full of drugs over the border. For this purpose he asks a tourist to carry the bag over the border for him and tells him that the bag contains pills for his sick mother.

It seems clear to me that it is not unnatural to say that the drug dealer *uses* the tourist. Moreover, Parfit cannot argue with regard to this example that the intuition that the drug dealer merely uses the tourist as a means is due to a confusion of means as events with means as individual objects. The drug dealer does not *harm the tourist* as a means to achieve a goal because he does not harm the tourist at all. He rather seems to treat *him* as a means. We therefore use the expression 'to merely use a person' and its relatives in singular situations and not (only) to denote an attitude.[27]

The phrase 'to use somebody' is a thick description, though, i.e. it always contains reference to some intention. An intention is not an attitude[28], but it is a mental state that seems to be related to attitudes somehow. One could therefore try to adapt Parfit's argumentation strategy and look for similar arguments with regard to intentions. Scanlon indeed seems to make this attempt. He speaks about an agent's intentions or reasons for action and tries to show that the wrongness of acts cannot depend on the actual reasons for which the agent acts.

Scanlon dedicates his whole book *Moral Dimensions* to the rejection of the popular claim that it is (often) an agent's intention that makes an act wrong. Scanlon does not offer one straight argument against this claim, but instead discusses various examples and some general considerations that seem to speak in favour of the claim and tries to show that he can offer a better explanation of the intuitions behind them.[29] The idea that A's using B merely as a means makes his act wrong is one of the examples he discusses.

Scanlon also refers primarily to Korsgaard's understanding of using people and agrees with Parfit that one problem with her account is that it seems to prohibit deception and coercion under all circumstances, although there are cases where deception and coercion are clearly permissible. Scanlon analyses a possible reply by Korsgaard, though, that Parfit did not consider and that prevents this implausible consequence. Korsgaard could argue that it is *not always* wrong to deceive or coerce a person, but only *if* we use that person. We would thus understand her as saying that if you are trying to gain from another person's presence or participation[30] then you are not allowed to do so by deceiving or coercing that person.[31] This reply rules out all the examples of benevolent deception that have been presented against O'Neill's and Korsgaard's account because in these cases the deceived person is not used in the relevant sense.

What seems plausible about Korsgaard's reply is that there are situations where we cannot be content with our interaction partner's rational or hypothetical consent. Parfit argues, for example, that a rapist might say that his victim could have *rationally* consented to having sexual intercourse with him and that we cannot, of course, accept this as a possible justification. Sexual activities certainly require both partners' *actual* consent. We are thus led to the question of what other situations require this momentary and individual agreement. Korsgaard is prepared to give an answer to this question as she can point to all situations of *one person using another* as requiring the actual consent of the person that is used.

Scanlon, who tries to reject the general thesis that it may be an agent's intention that makes an act wrong, cannot accept this reply. Trying to gain from another person's presence or participation is a condition that depends on the agent's intention and therefore cannot appear in a characterization of the properties that make acts wrong. He therefore has to reject Korsgaard's imaginary reply. Scanlon's first step in refusing Korsgaard's answer is to offer an alternative. He says that the idea of *rational consent* can also help us in determining which situations require the actual consent of the parties involved. We only have to ask 'whether B could *rationally will* a principle permitting A to act without her actual consent in such a case'[32]. This solution is elegant as it works with a minimal repertoire of concepts and derives all judgements about particular cases with the help of

one central notion, namely the idea of a rational will.

Scanlon's second step consists in analysing what makes Korsgaard's argument for the wrongness of using people intuitively plausible and to give a better account of these intuitions.

Korsgaard argued that coercion and deception are the most fundamental moral wrongs because we put our interaction partner in a position that precludes his assenting to the interaction. What is wrong with this, we can argue, is that we thereby subvert this person's will. Scanlon admits that this justification sounds plausible, but he presents an example that shows that subverting someone's will in itself is not always impermissible:

Conference in Paris: A is planning to attend a conference in Paris. A knows that B will want to go to the conference as well, if he learns that A is going there. But the conference will be a lot less enjoyable for A if B attends it too. A therefore sees to it that B does not learn of his trip, but without directly lying to B.[33]

A knows of B's wishes, and as these conflict with his own, he tries to prevent B's wishes from becoming reality, not by convincing B or by an open competition, but by concealing certain information from B.

We might thus say that A is indeed subverting B's will. But A is not, under most circumstances, acting wrongly. B has no claim on A that he let B know what he is doing. Korsgaard therefore has to say more about why it is wrong to coerce or deceive a person.

Here we are suggesting that Korsgaard limits her verdict about the wrongness of coercion and deception to situations of use. It is thus only absolutely wrong to coerce or deceive a person when we are trying to gain from this person's presence or participation. Within this line of argument Korsgaard would answer *Conference in Paris* by saying that A is not using B in that example and that A's act is not wrong for this reason.[34] And indeed it seems that we have a special and legitimate interest to be informed about another person's ends if we are supposed to contribute to these ends as we always are when somebody uses us. In *Conference in Paris* A does not try to reach his end by using B and is therefore not wronging B when he conceals his ends from B. But this is, arguably, different in Scanlon's following example:

Possible appointment: A and B are both planning to attend a conference. B is an important person in the field and A wants B to attend his lecture. A tells B that he would be glad to see him in the audience. He does not tell B, though, that he has a special interest in B's presence because a third person C will be in the room as well. C

is considering A for a possible appointment and he will take B's presence as a sign that B thinks well of A's work.

Scanlon agrees that in this case B has a legitimate claim to be informed about A's ends. Nevertheless he rejects Korsgaard's presumed argument that such examples show that A's act is wrong *because* in using B A subverts B's will. Scanlon admits that using another person is a special situation, because we generally have a legitimate claim to be informed about the other's ends in these situations and have to give our actual consent to render the interaction permissible. But Scanlon insists that this is not because of *A's intention* to profit from B's presence or participation, but because B serves another person's will. It does not matter if this will is the agent's will, as the following example is meant to show:

Reducing sessions: A and B are, again, both planning to attend a conference. A wants B to attend his lecture because B is a friend. A also knows that some members of the executive committee of the conference will attend his lecture because they have agreed to reduce the number of sessions and want to see which sessions are of special interest in order to decide which sessions to discontinue. A suspects that B's presence will be taken as a sign of the special

interest of the session his lecture is a part of. He does not care at all about the continuance of his session, but he knows that B will care about not influencing the decision of the committee members. Nevertheless, A does not tell B about it.

Scanlon argues that A wrongs B in this example as he wrongs B in the preceding example *Possible Appointment*. This shows that the wrong done to B in both cases does not depend on A's intention and therefore does not depend on A's using B, but on B's *legitimate interest* in being informed about the ends that B is serving.

Scanlon admits that we consider A's act in *Possible Appointment* to be more objectionable than his behaviour in *Reducing Sessions*. But he argues that this is so because A's behaviour differs *in meaning* in both examples and not because there are different reasons that make A's acts wrong.

2.3 Moral worth and meaning

Parfit argues that if we say something like 'It is wrong to *regard* a person as a tool' then the word 'wrong' cannot be meant in a strict moral sense. We are not thereby saying that some act is impermissible, but that some agent has a bad or objectionable *attitude* towards another person. When we say, instead, that A *uses* B merely as a means we report an act – A is using B – and ascribe an attitude – A regards B as a mere tool –, according to Parfit's analysis. Parfit has tried to show that such acts are not necessarily wrong. They are, nevertheless, morally objectionable in a way. To be able to express our moral indignation with regard to such acts without having to use the misleading expression 'wrong', that should be reserved for impermissible actions, we need another evaluative category. Parfit therefore proposes to use the Kantian expression 'without moral worth' to criticise the mere use of persons.[35] Parfit does not present an account of moral worth, though, and only offers us a terminology. Scanlon takes up this loose end of Parfit's considerations and develops his own account of moral worth, or of *meaning*, as he prefers to say.

It is instructive to introduce Scanlon's notion of meaning with the help of an example. Michael Stocker asks us in his famous paper

The Schizophrenia of Modern Ethical Theories to imagine a person called Smith who visits you in the hospital. You have been recovering there for a long time already and are bored by the hospital's routine. You consider Smith to be a 'real friend' and thank him euphorically for visiting you. But Smith answers your praise by saying that he did not visit you to cheer you up, but simply because he considers it to be his duty. He did not come for you, but because it is commanded by the moral law.[36] If you find out that Smith literally means what he is saying you will probably be disappointed. This disappointment is not due to Smith doing something wrong – after all he visited you in the hospital – but due to the reasons that motivated Smith to act. Scanlon describes similar cases by saying that you are not disappointed about the impermissibility of the act, but about its meaning. You believed Smith to be a friend and have certain expectations with regard to the motivation of a friend who visits you in the hospital. To find out about his actual motivation is therefore significant for you because it reveals to you the nature of your relationship. Scanlon thus defines the 'meaning of an act' as 'the significance, for the agent and others, of the agent's willingness to perform that action for the reasons he or she does'[37]. The meaning of an act in this sense depends on the agent's actual reasons for acting and on the kind of relationship between the interaction partners. If Smith visits a complete stranger in the hospital because he believes it to be his duty, his act would therefore have a different meaning.

Scanlon uses his distinction between the two 'moral dimensions' of permissibility and meaning to explain our complex intuitions towards concrete examples. Recall the example of the "*Friendly" Neighbour* that I mentioned in chapter 2:

"*Friendly" neighbour:* A young man meets his neighbour, a woman in her 60s, at the supermarket. He offers to carry her bags back home, because he hopes that out of gratitude she will invite him in for a cup of tea and so he will have a chance to meet her attractive daughter.

I have argued that we find something wrong with the young man's behaviour but that we are not willing to say that he does something morally wrong in a strict sense. Scanlon can describe this case by saying that the young man is acting permissibly, but that the old woman would probably be disappointed to find out about the real meaning of his behaviour because she would wish him to act for different reasons.

Scanlon argues that in many cases where we say that one person merely uses another we are actually talking about the meaning of this person's acts. We can speak of 'using people' in this sense with regard to permissible actions – as is the case with the above example – or with regard to impermissible behaviour. In the latter case the

fact that A uses B merely as a means is never a reason for A's act being wrong. It can raise the intuition, though, that behaviour involving the use of a person is more objectionable than behaviour that does not involve a person in that way. Scanlon argues that this is true with regard to the two examples *Possible Appointment* and *Reducing Sessions*. In both cases the agent A fails to inform the other person B about what ends B is going to contribute to. B has a legitimate interest in being informed about her contribution to other person's ends and is thus wronged by A's failure. But in *Possible Appointment* A is involving B in the pursuit of his own ends and is thus using B. This seems to be worse than the failure to inform B out of negligence. Scanlon stresses that we cannot conclude from our intuitions about a difference in strength with regard to the two examples that the source of wrongness must differ as well. It is rather a difference in meaning that explains our intuition that A's behaviour is worse when he involves B to serve his own ends. Scanlon believes his distinction between permissibility and meaning to resemble Kant's distinction between acting in accordance with duty and acting from duty. According to Kant we only act from duty if we act from a moral motive. If we act for other reasons our act may be permissible, but it cannot have what Kant calls 'moral worth'. Scanlon similarly says that besides our acting permissibly our acts can have a positive meaning if we act for the right moral reasons.

3. Problems

Parfit's and Scanlon's accounts certainly have several problems of their own. It is unclear, for example, how to judge if a person can rationally consent to my interaction with her and why the consent of everybody involved in an interaction is necessary. But here I only want to criticise Parfit and Scanlon with regard to their arguments against the alternative accounts of using people.

First of all, there seems to be a further reply open to O'Neill and Korsgaard. Parfit suggested that O'Neill and Korsgaard may restrict their argument to methods that are *conceptually* incompatible with the consent of the interaction partner. Scanlon suggested that O'Neill and Korsgaard could constrain their claims to the *context* of using people. Both, Parfit and Scanlon, offer arguments against these strategies separately, but they do not consider a combination of both. O'Neill and Korsgaard might say that it is wrong to use a method that is conceptually incompatible with the interaction partner's consent, *if* we are using that person. I do not find this solution completely convincing, but it has some *prima facie* plausibility and deserves consideration. It has some similarities with the account that I want to propose in the last chapter.

Second, Parfit and Scanlon believe the evaluation of attitudes to

depend on the evaluation of acts. Scanlon, for example, stresses that the moral value of an attitude depends on our acting for the reasons that make our acts obligatory or impermissible, but first we have to know what we have to do, then we can know what we should take as reasons for action. Kant, in contrast, seems to believe that first of all we are obliged to have a certain attitude and from this attitude we can deduce what we have to do.[38] Parfit and Scanlon do not consider this different model of morality. It is taken up by the value-based account of using people that I will discuss in the next chapter.

Notes

1Derek Parfit, “On what matters - unpublished manuscript” (July 2009): p.177.

2See Derek Parfit, “What we could rationally will. The Tanner lectures on human values,” 2002, p.297, http://individual.utoronto.ca/stafforini/parfit/parfit_-_what_we_could_rationally_will.pdf; and Parfit, “On what matters - unpublished manuscript,” p.166.

3Parfit, “On what matters - unpublished manuscript,” p.166.

4Ibid., p.169.

5The example is presented by Parfit under the name Fourth Earthquake, cf. Ibid., p.181.

6Parfit, “On what matters - unpublished manuscript,” pp.166-167; Parfit refers to Kamm as the source of this example, cf. Frances Myrna Kamm, *Intricate Ethics Rights, Responsibilities, and Permissible Harm* (Oxford: Oxford University Press, 2007).

7Parfit, “On what matters - unpublished manuscript,” p.168.

8Ibid.

9Ibid., p.167.

10Ibid.

11As O'Neill still argued in Onora O'Neill (Nell), *Acting on Principle. An Essay on Kantian Ethics* (New York, NY: Columbia University Press, 1975).

12Parfit, “On what matters - unpublished manuscript,” p.144.

13Ibid., pp.144 and 149.

14Ak. 4:406.

15Ak. 4:436-437.

16Thomas Scanlon, *Moral dimensions: permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008), p.90. Scanlon does not take into account at this point that Kant limits the scope of the prohibition against using people to perfect duties. Kant could thus say that his prohibition also 'seems appropriate in response to some wrongs but not to others'. Scanlon suggests that the scope of the common sense notion is smaller than the class of perfect duties when he argues that this notion does not include failure to render assistance in an emergency or causing death through negligence (cf. pp.90 and 106). But these examples are not entirely convincing as proof that the common sense notion and Kant's notion differ in scope, as it is unclear if Kant includes these two examples in the class of perfect duties. Scanlon's considerations are very helpful, nevertheless, in making his readers more sensitive to the differences between the common sense and Kant's notion of using people.

17Ibid., pp.94-98.

18Ibid., p.92.

19Ibid., p.99.

20Ibid., p.98.

21Ibid., p.99.

22Thomas Scanlon, *What we owe to each other* (Cambridge Mass.: Belknap Press of Harvard University Press, 1998), p.10.

23Scanlon uses the word 'sense' as the relevant opposition to meaning. He wishes this term to denote what has been called 'nature' by Robert Adams and 'essence' by Saul Kripke, cf. Scanlon, *What we owe to each other*, p.12, fn. 3 and 4; cf. Robert Merrihew Adams, “A Modified Divine Command Theory of Ethical Wrongness,” in *Religion and Morality: A Collection of Essays*, ed. Gene Outka and John P. Reeder (Garden City, NY: Doubleday, 1973); and Saul A Kripke, *Naming and necessity* (Oxford: Blackwell, 1980).

24Scanlon, *What we owe to each other*, pp.10-12.

25Ibid., p.10.

26Parfit, “On what matters - unpublished manuscript,” p.168.

27This is further evidence against Parfit's claim that his account mirrors our

common sense use of the concept. Parfit can argue, of course, that his account is an improvement of the common sense notion and still preserves some of its elements. But he cannot refer to our common sense understanding as support for his account and as evidence against O'Neill and Korsgaard.

28Natural language is flexible enough to allow the expression 'attitude' to be used in a wide sense that includes intentions as well. Scanlon actually understands 'attitude' in this wide sense, cf. Scanlon, *Moral dimensions*, p.118. This step is not open to Parfit, though, as he understands attitudes to have a dispositional form, and it is implausible to argue that intentions have a dispositional form as well.

29Niko Kolodny detects three 'arguments' in Scanlon's book. The first is the distinction between permissibility and meaning; the second is an argument about the availability of reasons, and the third consists in Scanlon's discussion of particular examples; cf.Niko Kolodny, “Scanlon's Investigation: The Relevance of Intent to Permissibility,” n.d., http://sophos.berkeley.edu/kolodny/ScanlonAuthorMeets.pdf. I will discuss Scanlon's notion of the meaning of actions and his considerations about particular examples in this chapter and pick up the second argument about the availability of reasons in the following one.

30This is Scanlon's definition of using people. Scanlon seems to adopt the condition from Quinn who gives quite a similar definition. Warren S. Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect,” *Philosophy and Public Affairs* 18, no. 4 (Autumn 1989): 334-351.

31Although this reading does not fit well with Korsgaard's general claim that deception and coercion are 'the two most fundamentally wrong things you can do to others' (cf. Christine M. Korsgaard, “Two arguments against lying,” Argumentation 2, no. 1 (1988): p.347) Korsgaard indeed suggests this contextual reading at various points, cf. Christine M. Korsgaard, “The Right to Lie: Kant on Dealing with Evil,” *Philosophy and Public Affairs* 15, no. 4 (1986): p.334: 'This means that in any cooperative project – whenever you need the decisions and actions of others in order to bring about your end – everyone who is to contribute must be in a position to choose to contribute to the end.'.

32Scanlon, *Moral dimensions*, p.110 (my emphasis).

33Ibid., p.109.

34Kolodny suggests in his analysis of Scanlon's argument that Scanlon believes that A uses B in Conference in Paris. Cf. Kolodny, “Scanlon's Investigation: The Relevance of Intent to Permissibility.” Kolodny admits that it is strange to say that

A makes use of B's presence or participation in this example (p.21), but he believes that Scanlon is determined to say so. I consider this example to show that subverting the will is not always wrong in general without talking about using people. Maybe Kolodny understands the sentence that follows the discussion of the example – 'The wrong that we are considering here – the one brought about by Korsgaard's examples […]' – to refer to the foregoing example Conference in Paris. I believe the expression to refer solely to Korsgaard's examples, i.e. to deception and coercion.

35Parfit does not say, of course, that it is *never* wrong to use a person merely as a means. Most acts of this kind are indeed wrong in Parfit's eyes. But there are mere uses of persons that are not wrong and this shows, according to Parfit, that the fact that A uses B merely as a means cannot be the reason for the wrongness of such acts.

36Cf. Michael Stocker, “The Schizophrenia of Modern Ethical Theories,” *The Journal of Philosophy* 73, no. 14 (August 12, 1976): p.462; Scanlon does not discuss Stocker's example explicitly, but it is clear that he is inspired by such cases. Cf. Scanlon, *Moral dimensions*, pp.102-104.

37Scanlon, *Moral dimensions*, p.4. Cf. also p.52.

38Cf. Onora O'Neill, “Between Consenting Adults,” *Philosophy and Public Affairs* 14, no. 3 (1985): p.267.

VI A Value-based Account of Using People

One of the central problems of Kant's account of using people was the question of how he gets from his theory of value to principles that prescribe particular acts and omissions. In Kant's eyes, the value of rational nature gives us reasons for action insofar as we are obliged to acknowledge this value as the value it is, and to act in accordance with this value. It is not evident, however, what it actually means to act in accordance with absolute value or dignity, and it is even less clear how Kant wants to get from his abstract formula to all perfect duties that he believes to be covered by the prohibition against using people merely as means. The procedural account of using people tries to solve this problem with the help of the insight that the capacity to set ends is manifested – among other things – through our giving consent to interactions with other people. Respect for the value of this capacity therefore demands our respect for the consent of others and prohibits all forms of coercion and deception as these modes of interaction conceptually preclude our partner's consent. The attitudinal account of using people agrees with Korsgaard and O'Neill that consent is the central criterion for the wrongness of acts. They reject the procedural account of using people, though, because they believe that the wrongness of acts has no direct relation with the use of

people. The notion of treating people merely as means should instead be understood as an ideal for how to regard other people. Parfit and Scanlon thus argue that Kant's theory of value is interesting as a theory of moral worth and provides an ideal for our attitude towards others, but that it does not lead to a plausible theory of how to act. The value-based account[1] of using people opposes this critique of Kant. They argue instead that Kant's theory of value not only provides some ideas that can help us to derive a catalogue of duties, but emphasize that the idea of absolute value *directly* provides us with reasons for performing or omitting certain acts. The value-based account thus differs from the procedural account in believing that the notion of consent is not necessary to derive concrete duties from Kant's theory of value.

1. The value of reason

Thomas Hill's text *Humanity as an End in Itself* can be seen as an early source of a value-based account of using people. It is not clear if Hill's interpretation of Kant also displays his own views on the matter, but he certainly has great sympathies with Kant's general approach.[2] Hill starts his interpretation of Kant's Formula of Humanity with the observation that Kant does not prohibit the use

of *persons*, but the use of *humanity*. As Korsgaard and O'Neill after him, Hill also understands 'humanity' to mean rational nature and interprets 'rational nature' as referring to our rational capacities.[3] The Formula thus commands that we shall not use *our rational capacities* merely as means, but have to treat them as ends in themselves.

Hill suggests that this command must be understood with the help of Kant's views about the special value of our rational capacities.[4] He therefore links his reading of the Formula of Humanity to Kant's theory of value and to the idea of dignity in particular. He stresses accordingly that we must suppose our rational capacities to possess dignity, i.e. 'an unconditional and incomparable worth'[5]. When Kant says that an entity has unconditional worth Hill takes him to mean that it has the worth 'independently of any effects, profit, or advantage which it might produce.'[6] A value is incomparable, on the other hand, when 'no amount of price, or value dependent on contingent needs and tastes', can justify its sacrifice.[7]

It is Hill's central idea that the assumption that our rational capacities have this kind of unconditional and incomparable value already precludes certain forms of behaviour with regard to all entities that possess this kind of value. Above all, we must not treat an entity that has such value *as if* it did not have it. We must

instead acknowledge the value as the value it is and react accordingly in our thinking and our behaviour.

To show the direct 'practical implications'[8] from Kant's theory of value Hill points to Kant's remark that dignity 'admits of no equivalent'[9] and stresses that this *implies* already that 'what has dignity cannot morally or reasonably be exchanged for anything of greater value, whether the value is dignity or price'.[10] This prohibition has two direct consequences. First, we can never justify the impairment of rational capacities by pointing to the *relative* value of anything else, no matter how great this relative value is. As Sam Kerstein puts it: 'Not even all the gold in Fort Knox would truly compensate for the killing of one rational agent.' Second, neither are we allowed to sacrifice someone's rational capacities for the rational capacities of anybody else, even if these latter capacities have dignity themselves. Hill stresses that this does not mean that rational capacities cannot be impaired under any circumstances whatsoever, but only that such an impairment *cannot be justified* by the value that we achieve instead. He thus writes that 'if the sacrifice of something with dignity is ever justified, the ground for this cannot be “this is more than that” or “a greater quantity of value is produced by doing so”.'[11] Hill does not make it clear what other form of justification he has in mind, but such a justification will, anyway, only become relevant in rare and extreme situations. Generally speaking, our rational nature's

absolute value implies that we are not allowed to destroy or impede our rational capacities and that we must not accept any trade-off so that 'even if neglecting, impairing, or dishonoring a person's humanity were to cause people pleasure, this would not be a rational exchange'[12]. Paradigmatic violations of Kant's Formula of Humanity are therefore surgical treatments, such as lobotomy, that irreversibly rob a person of his rational powers.[13] Further examples are provided by Kant's arguments against drug abuse and his condemnation of gluttony because it leaves one 'temporarily incapacitated for activities which acquire adroitness and deliberation in the use of one's powers'[14]. Hill argues furthermore that the value of these powers gives us reason not to kill rational beings – which includes a prohibition of most forms of suicide –, to provide others opportunities for rational development, to avoid one's own pain and misery as obstacles in the use of one's rational powers, to influence others only by appeal to their reason, to give others room to set and pursue their own ends and to refrain from mockery and servility.[15] At least the following three features of Hill's assumptions about the scope of Kant's Formula of Humanity are noteworthy: First, Hill believes that the Formula covers a huge range of cases. Second, he does not include duties to promote the wellbeing of other people in the list.[16] Third, the prohibition against using people does not play any role in the derivation of duties and does not even serve to pick out one special class of duties.[17]

In his remarks about the practical implications of the assumption that rational capacities possess dignity Hill often says that it is 'obvious' or 'natural to suppose' that valuing these capacities will lead to certain forms of behaviour. He is not explicit, though, about the exact relation that exists between the value of rationality and the behaviour that it presumably commands or forbids. He might be taken to mean that certain forms of treatment are *by their nature* inappropriate towards things with a special kind of value. Or he might be understood alternatively as saying that *agents* who value things that are valuable would not treat these things in certain ways. The latter reading is better supported by the text, I think, for example, when Hill says that '*one who sufficiently valued* persons' rational capacities would presumably not want to destroy the persons themselves'[18]. This answer leads to further questions, though. We would like to know, for example, what a person *valuing* somebody's rational capacities means. Does she believe something about them? Does she act with certain intentions towards this person? Or does she have certain dispositions to act? Some quick answers to these questions can be ruled out. It might be suggested that one does not value somebody's rational capacities when one does not believe that this person has the relevant capacities. But this cannot be what Hill means by 'valuation' because some of his illegitimate forms of interaction consciously make use of another's rational capacities. Deception and

manipulation, for example, presuppose acknowledging that the other person is indeed a rational agent.

2. Respect

Allen Wood shares Hill's conviction that Kant's theory of value is central to the moral evaluation of acts. He agrees that the Formula of Humanity basically requires us to treat our rational powers as ends in themselves and that ends in themselves are entities with unconditional and incomparable worth[19]. However, Wood emphasizes more clearly than Hill that the wrongness of acts depends on the agent's valuation and he gives a name to the required evaluative reaction: '"Respect" is the name for the proper attitude toward any objective value.'[20] Respect is one of the four moral feelings that Kant distinguishes in the *Metaphysics of Morals* and is appropriate as a reaction to all value that can be shared by every rational being. Wood stresses, though, that we are not obliged to respect objective value in the sense that we must have a certain state of mind in our action. Our obligation instead consists in *expressing* respect with our behaviour and whether our

behaviour expresses respect or not depends on putting ourselves in some specific inner state. If I treat someone honestly, for example, I express respect for my interaction partner's rational capacities through my action even when I act for selfish reasons.[21]

To say that our actions should express something might be understood to mean that we have to act in ways that carry a conventionalized symbolic meaning. We can be obliged in this sense to shake other people’s hands or to say 'thank you' when we have received some favour. But Wood makes it clear that the obligation to express respect should not be understood in this narrow sense. We express respect for some value whenever we use this value to provide us with reasons for action. In some cases these reasons are reasons to perform some symbolic action, but in most cases our reasons are not of this specific kind.[22] Furthermore, we also take an entity's value as a reason for action, if we omit some action for the sake of this entity. In these cases we therefore express our respect simply by expressing no disrespect for it (see Kerstein, p.6).

According to Wood our fundamental moral duty is thus to act only in ways that express respect for the value of our rational capacities. Wood also stresses that this general idea contained in Kant's Formula of Humanity is 'clear and determinate'.[23] That does not mean, though, that its application is easily done. To apply the

requirement of expressing respect for the value of rational nature we need 'intermediate premises' that tell us which particular acts express respect or disrespect. The need for these bridges between the general idea of moral respect and particular problems has the result that moral questions are essentially controversial. They can only be answered under particular cultural and historical circumstances and require experience and careful judgement. This judgement can be trained through folklore, literature, and religion, but all answers to particular moral problems will always remain transient, according to Wood.

These problems in the application of Kant's Formula of Humanity notwithstanding, Wood takes the Formula to be the supreme principle of morality that covers the whole of our moral duties. In Wood's reading, the Formula has an even wider scope than it has for Hill, O'Neill and Korsgaard, including duties of justice, duties of respect, duties of love, duties to oneself and – indirectly – duties that follow from our special roles, institutions and relationships.[24] To derive this set of duties Wood does not employ the prohibition against using people, though. Like Hill, he seems to be sceptical about the prohibition's practical use when he mentions that, in his opinion, far too much is often made of Kant's claim that it is wrong to treat people merely as means.[25]

If we take all these features of Wood's account together, it no longer seems to differ much from the view defended by Thomas Scanlon. Scanlon has argued that Kant's Formula of Humanity offers a *prima facie* plausible moral principle that tells us which acts are wrong and what reasons we have for omitting them. He thus believes the principle to play a criterial and a transcendental role. He doubts, though, that Kant's principle gives us any reasons that *make* acts wrong, i.e. that the principle can play an explanatory role as well. Scanlon stresses in particular that the idea of treating people merely as means is not able to explain the wrongness of acts directly, as it always refers to the agent's reasons for action. Wood's assumption that the Formula of Humanity only offers us a general principle that must be supplemented by intermediate premises to yield practical implications; his clarification that respect cannot be required as a particular state of mind but only as a meaning of the act; and his doubts about a special role for the prohibition against using people may be read in this same vein. But some of Wood's considerations also lead in a different direction, incompatible with Scanlon's account:

> 'What, then, could be Kant's purpose in including “never merely as a means” so ostentatiously in the verbal statement of FH [the Formula of Humanity] and of his equally conspicuous use of like phrases in many of his arguments from FH? One answer is that the phrase calls special attention to what Kant

> takes to be *a fundamental pattern in human wrongdoing*. He thinks it is a propensity of human nature to show disrespect for the dignity of humanity not because we altogether fail to value it, but because *we tend to place things of lesser value ahead of it*, treating rational nature (which is an end in itself) as a mere means to these merely conditional goods.'[26]

Wood here introduces a role for the prohibition against using people that differs from the roles that Scanlon was willing to grant. While Scanlon confined the prohibition's roles to either a very general principle of morality or to a factor in determining the meaning of acts, Wood argues in this passage that using people is a 'fundamental pattern in human wrongdoing' and that it is characterized by a conflation of values: We 'invert the proper order of incentives'[27] and use what is of absolute value for the sake of what is only relatively valuable. We thus act for the wrong reasons and *therefore* act wrongly. It was this relation between acting for the wrong reasons and acting wrongly that Scanlon meant to repudiate.

3. Self-contradiction

The role of the prohibition against using people to which Woods alludes in this passage was described with great clarity by David Velleman, a third representative of a value-based account of using people.

Velleman introduces the idea of a conflation of value with the help of two non-moral examples: People do exercise to stay healthy and people save money to buy things that facilitate or enrich their lives. But people sometimes overdo exercise and frugality in a way that is due to a conflation of values: They dedicate themselves to exercise and saving money in a way that distracts from their health and their wellbeing, although health and wellbeing are the values that are responsible for the relative value of exercise and saving money in the first place. According to Velleman, this prudential mistake is analogous to the moral mistake of someone who treats an entity with dignity as if it only had relative value. The entity whose value is not recognized by an agent can also be the agent himself, as Velleman makes clear in discussing the example of suicide[28]:

To better understand Velleman's discussion of suicide as an example of such a conflation of moral values, it is noteworthy that Velleman does not agree with Hill and Wood with regard to the

interpretation of Kant's term 'humanity' in the Formula of Humanity. While Hill and Wood argued that 'humanity' should be interpreted as referring to an agent's rational capacities, Velleman believes that it refers instead to the agent herself. I will say more about this new interpretation a little later. Different convictions about the exact value bearer are not important for the idea of a value conflation, though, as Hill and Wood could present analogous arguments by substituting 'person' with 'rational capacities' in Velleman's argument.Furthermore, it should be noted that in Velleman's eyes it is not wrong in general to kill oneself or to ask somebody to kill one. Like Kant, Velleman concentrates on the case of an agent who kills himself 'from self-love'[29] or 'in order to escape a troublesome situation'[30]. A suicide of this kind eradicates a person for the sake of his wellbeing and thus acts as if the value of the person depends on the value of his wellbeing in life. But the opposite is true: A person's wellbeing can only matter because the person himself matters, and his wellbeing therefore owes all its value to the value of him as a person.

A suicide from self-love thus confounds a derivative value with its underlying value, according to Velleman's analysis. As we saw already, Allen Wood expressed a very similar idea. He said that in many acts we place what is a conditional good with lesser value ahead of what has dignity or absolute value. Wood states that this is basically what Kant means when he prohibits using an end in itself

merely as a means. Velleman makes it clear, though, that the confusion of value that is involved in suicide from self-love, for example, is not exactly the same confusion as that between a means and an end. Saving money may be a means to buy valuable goods, but a person's wellbeing is not a means to the person. The confusion of the latter sort is only an *analogous* confusion in the sense that in both cases one impairs an absolute value for the sake of a relative value, although that relative value owes its worth to the absolute one. An instrumental relation is only one possible relation between a conditional value and its conditioning value. Some things owe their value to the fact that they *symbolize* or *constitute* some other valuable thing, but there can be value-confusions with regard to these different relations as well. A military unit may stubbornly defend a flag as a symbol of its country, for example, and thereby lose sight of defending a densely populated part of a city. These soldiers arguably confound the symbolic value of the flag with the original value of the country and its citizens.

The central idea of all these confusions of value is that the relation between a conditioning and a conditional value is a normative relation. As a matter of fact, one value is a condition for the value of something else and this provides us with reasons for action: We should only pursue the conditional value for the sake of the conditioning value and should not impair the conditioning value for

the sake of the conditional value. If the values in question are moral values then a confusion of conditional and conditioning value makes an act wrong.

It is also a very important feature of Velleman's idea of a value-confusion that this is not a mere cognitive mistake. Somebody who impairs a conditioning value for the sake of a conditional value not only has a false representation of the actual relation between two values, he also mixes up the relation between two values that he accepts himself – at least implicitly. The conflation of value discussed by Velleman and others is therefore a form of *self*-contradiction.[31]

The idea of a normative self-contradiction implies that the reasons of the agent for the wrongness of his acts matter. It is not wrong per se to kill myself, for example, but it is wrong to kill myself *from self-love* because only when I commit suicide from this motive do I commit a conflation of value. This assumption directly opposes Scanlon's view that the reasons for which an agent acts cannot render his act wrong.

I mentioned in the preceding chapter that Scanlon mainly defends this view by discussing examples and trying to offer plausible reconstructions of them that do not depend on the agent's reasons for action. He leaves out many possible examples, though, and does not include deception, suicide and murder, for example. But he also

offers one more general argument in his book that might be meant to include these cases as well. The argument starts again with an example:

Saving a rival: B is close to drowning, but A has a chance to save B's life. A happens to hate B and would like him to die. A does not want B to die now, though, because this would mean that B's heir would inherit B's wealth and be able to use this money against A in a political campaign. A saves B's life for this reason.[32]

Scanlon argues that it is odd to say that A acts wrongly. He tries to establish this conclusion by the following premises: First, we want A to save B. Second there must be a permissible option open to A in this situation. Third, there are only two options open to A: He can either let B die or save him for the wrong reasons. The third premise seems to be the most vulnerable one as we want to say that A could also save B *for the right reasons*. But Scanlon doubts that this is really an option open to A. He admits that we certainly have legitimate expectations with regard to other people's motives for action and that we can criticise A's motivation and ask him to change his reasons for action in the course of time. Scanlon insists, though, that we cannot ask A to act *now* from a certain motive

because we cannot at the moment choose the reasons for which we. The right reasons are unavailable to A and he therefore cannot act wrongly if he fails to act for them.[33]

Scanlon's assumptions about the availability of reasons are, of course, very controversial. Many people would stress that moral considerations are not esoteric and must be available to every rational agent. Scanlon agrees with these critics, but he replies that moral considerations can be *seen* by everybody, but not everybody can act on them as we cannot *choose* which reasons to act on. This claim is not much less controversial, though, as Kantians and other philosopher's would reply that the fact that something has moral value can motivate me without any further incentives. Nevertheless, I do not want to enter this debate about moral motivation here, but instead level an objection against Scanlon that has to do with the particular structure that at least some wrongs exhibit according to a value-based account: A suicide motivated by self-love acts wrongly, according to this account, because he sacrifices his person for the sake of his wellbeing, although he knows that the value of his wellbeing depends on the value of his person. He therefore knows that his reasons for killing himself only hold if he has reason to preserve his person and thus cannot kill himself for the former reasons. In cases of self-contradiction such as this one it is never true that the agent does not have the possibility to act for the right reasons because he cannot bring it about to act for these reasons. The

agent not only knows, but is committed to these reasons *already*. Even if Scanlon's argument is accepted with regard to saving people, it never holds for cases of self-contradiction.

4. The value of persons

While Hill, Wood and Korsgaard identified the bearer of the special value that should not be conflated with merely relative value as the rational capacities that human agents typically possess, Velleman suggested that it is persons themselves who possess unconditional value. I argued above that the difference between these two positions is irrelevant for the idea that many moral wrongs consist in a self-contradictory conflation of values and thereby also irrelevant for rejecting Scanlon's objection. But there are, of course, other important differences between these two positions. In what follows I want to explain shortly why I favour Velleman's view.

Rationality is a state that can be promoted. We can train our rational capacities, we can bring about more of it through procreation, we can preserve the rational capacities that are there already etc. But the

position that rationality is to be promoted together with the assumption that it has unconditional and incomparable value yields very implausible consequences: If our rational capacities have an unconditional and incomparable value then we are never allowed to impede a rational capacity in order to achieve any other good. Derek Parfit argues that this consequence is 'insane' as it implies that 'it would be wrong for us to damage our ability to play chess or solve crossword puzzles, even if these were the only ways of saving any number of people from any amount of pain'[34]. Hill, Wood and Korsgaard therefore stress that the value of our rational capacities is of a kind that is to be respected rather than to be promoted. But what does respecting rational capacities mean if it does not mean promoting them in the world? It seems plausible to suggest that respecting rational capacities means respecting the decisions of rational agents. This answer leads to the further question of whether we have to respect all decisions or only the rational ones. O'Neill and Korsgaard argued that we have to respect irrational decisions as well because we would otherwise impose our will on them 'in the name of higher and more rational selves'[35]. It is not clear, though, how this plausible constraint can be justified if it is rationality that we are required to respect. I think it is thus more plausible to say that we feel obliged to respect even the irrational decisions of other people because they are *their* decisions. This suggests that it is the person that I have to respect and not her rational capacities.

It might be argued against this position that it is unclear what is valuable about an individual person. Every person often fails in many ways and one may wonder why we are supposed to respect all of a person's quirks and mistakes and even vices. But this objection conflates two aspects of the concept of value. One aspect is the entity that possesses the value, i.e. the value-bearer, and the other aspect is the properties that explain why the value-bearer is valuable.[36] This distinction allows us to say that persons have value because they are rational and autonomous, but that it is nevertheless the person who is valuable and must be respected. If we do not draw this distinction we are forced to accept that all ultimate value must be a simple property in the sense that it cannot be explained or justified. This position is unattractive, though, because it would preclude any rational discourse about which properties are responsible for the value of an entity. It is common in our evaluative practice to agree about the value of something, but to quarrel about the reasons for this value, and it is not clear why we should give up this part of our social discourse. When we are asked to respect persons because they are rational or autonomous beings, we are therefore neither required to acknowledge that these persons are particularly valuable individuals, nor do we have to promote rationality because it bestows value on its bearers. We have to *respect persons because and insofar as* they are rational and autonomous beings.

There is a further reason to prefer the view that persons are the bearers of the special value called dignity: As we have seen, the concept of using people is closely connected to the idea that we should be treated as the persons we are. To feel used often contains the sensation of not counting as an individual being, but only as a tool that can easily be replaced. If we understand using people as means in Velleman's sense to mean that the value of a person is subordinated to some relative value, we can explain this feeling very well. The respect that the value of a person requires is respect for the incomparable value called 'dignity' and this value 'calls for a response to the object *in itself*, not in comparison with others'[37]. If this respect is refused us, we thus feel that we are degraded to a thing that only matters because it does a good job in bringing about some end and is robbed of its individual value. Velleman can therefore solve a problem that I raised with regard to Korsgaard's account: I argued that it is implausible that the wronged party in a case of use is ultimately rationality as an abstract entity, as Korsgaard suggests. It is hard to see how we get from this abstract entity to the reasons that we put forth in our common moral discourse when we criticise the wrongs done to individual persons. Velleman's assumption that it is the value of individual persons that is subordinated in using people can capture these common sense intuitions because in his account it makes sense to respond to our users 'But what about *me*?'.

5. Problems

The value-based account helps us in answering many of the questions we were pursuing during the preceding chapters. It helps us to understand the relation between attitudes and acts and explains why our common discourse contains many expressions, such as 'to treat a person as a means', that can be used to refer to attitudes and to acts at the same time. It thereby helps to eliminate an argument, suggested by Parfit and Scanlon that seems to rule out the possibility that we can act wrongly because we act for some attitude or intention. Moreover, we now have a better understanding of what it is to “feel used” and why this feeling reveals an important aspect of what it is to wrong a person. The value-based account fails, though, in offering a clear-cut scope of the prohibition against using people. We have seen that Hill and Wood suppose an even wider scope for this prohibition than O'Neill and Korsgaard, and it is even less clear how we get from their ideas of respect and dignity to this particular class of moral duties. Velleman painstakingly tries to show how we get from the idea of a subordination of value to concrete duties and illustrates this with the example of suicide. It is not clear, though, how his considerations about an implied self-contradiction can be employed in deriving other duties. It may often sound convincing to say that an agent who kills, deceives or harms another person

'acknowledges the validity of the law and only wishes to be an exception to it', as Kant says.[38] But the derivation of a self-contradiction often has an air of a *petitio principii* that only imputes the moral convictions to others that it actually wishes to derive. To avoid this impression the reconstruction of a self-contradiction has to follow definite rules that allow us to see what beliefs we are presupposing and what moral duties we want to derive. It seems unlikely to me that we can offer such a procedure for all agents and every situation. Values that can be presupposed to be universally shared are certainly rare and it is unclear what kinds of moral justification they allow for. I therefore propose to look for the evaluative self-contradictions that render acts wrong in specific contexts that offer us more material that we can use in deriving moral duties. Such an attempt to derive a moral duty by combining the general idea of a subordination of value and a specific context of action will be presented in the following chapter. It is essential to the aim of this book that it is the concept of using people that provides not only the idea of a subordination of value, but also gives us the context that we need to see what this subordination amounts to in concrete cases.

Notes

1I borrow the label 'value-based account' from Samuel Kerstein, “Death, Dignity, and Respect,” *Social theory and practice.* 35, no. 4 (2009): 505.

2Nowadays Hill still defends something like a value-based account. In a recent publication he writes: 'We must treat persons, qua rational beings, as having a special value. That they are rational, even if imperfectly so, is a crucial part of why we must treat them as ends in themselves, but it also suggests vaguely how they should be treated.' Cf. Thomas Hill, “Treating Criminals as Ends in Themselves,” *Annual Review of Law and Ethics*, 2003, p.20 In Hill's new account at least part of our moral duties must be derived with the help of procedural criteria, though.

3Thomas Hill, “Humanity as an End in Itself,” *Ethics* 91, no. 1 (1980): pp.85-86.

4Ibid., p.88.

5Ak. 4:436.

6Ibid., p.91.

7Ibid., p.92.

8Ibid., p.93.

9Ak. 4:434.

10Ibid.

11Ibid.

12Ibid., p.89.

13Ibid., pp.93-94.

14Ak. 6:427.

15Ibid., pp.95-97.

16This changes in his later writings. Cf. Hill, “Treating Criminals as Ends in Themselves.”

17Hill is aware that Kant uses the prohibition to distinguish between perfect and imperfect duties, cf. Hill, “Humanity as an End in Itself,” p.87. But Hill does not refer to this distinction in his arguments for the inclusion of particular duties under the Formula's scope. This is due the fact that he believes that the idea of using people raises intuitions in modern readers that are not helpful in understanding Kant's texts, cf. pp.87-88.

18Ibid., p.93, my emphasis.

19Wood often speaks of 'objective' instead of 'unconditional' ends and of 'absolute' instead of 'incomparable' ends, but he means basically the same as Hill. Allen Wood, “Humanity As End in itself,” in *Kant's Groundwork of the Metaphysics of Morals: Critical Essays.*, ed. Paul Guyer (Lantham: Rowman & Littlefield, 1998), cf. pp.168-171.

20Allen W Wood, *Kantian ethics* (Cambridge: Cambridge University Press, 2008), p.86.

21Wood, “Humanity As End in itself,” pp.169-170; Allen Wood, *Kant's ethical thought* (Cambridge ;;New York: Cambridge University Press, 1999), p.117.

22Wood, *Kant's ethical thought*, pp.141-142; Wood, “Humanity As End in itself,” p.177.

23Wood, “Humanity As End in itself,” p.181; Wood, *Kant's ethical thought*, p.154.

24Wood, *Kantian ethics*, pp.161-166.

25Ibid., p.87.

26Wood, *Kant's ethical thought*, p.143, my emphasis.

27Ibid., p.143.

28To better understand Velleman's discussion of suicide as an example of such a conflation of moral values it is noteworthy that Velleman does not agree with Hill and Wood with regard to the interpretation of Kant's term 'humanity' in the Formula of Humanity. While Hill and Wood argued that 'humanity' should be

interpreted as referring to an agent's rational capacities, Velleman believes that it refers instead to the agent herself. I will say more about this new interpretation a little later. Different convictions about the exact value bearer are not important for the idea of a value conflation, though, as Hill and Wood could present analogous arguments by substituting 'person' with 'rational capacities' in Velleman's argument.

29Ak. 4:422.

30Ak. 4:429.

31Like many ideas on the value-based account this idea was already mentioned in Christine Korsgaard, “Kant's Formula of Humanity,” *Kant-Studien* 77, no. 1 (1986): p.198. Korsgaard's dominant view still hinges on the notion of consent, though, and therefore differs from Hill's, Wood's and Velleman's account.

32Thomas Scanlon, *Moral dimensions: permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008), p.57.

33Scanlon, *Moral dimensions*, pp.56-62; my presentation of Scanlon's argument is inspired by Niko Kolodny, “Scanlon's Investigation: The Relevance of Intent to Permissibility,” n.d., p.6, http://sophos.berkeley.edu/kolodny/ScanlonAuthorMeets.pdf. My arguments against Scanlon are quite different from those of Kolodny (see pp.6-10), though.

34Derek Parfit, “On what matters - unpublished manuscript” (July 2009): p.189.

35Onora O'Neill, “Between Consenting Adults,” *Philosophy and Public Affairs* 14, no. 3 (1985): p.257.

36Rabinowicz and Rønnow-Rasmussen call this the 'supervenience base' of the value; see Wlodek Rabinowicz and Toni Rønnow-Rasmussen, “A Distinction in Value: Intrinsic and for Its Own Sake,” *Proceedings of the Aristotelian Society* 100, New Series (2000): 33-51.

37David Velleman, “Love as a Moral Emotion,” *Ethics* 109, no. 2 (January 1999): p.364, my emphasis.

38Ak. 15:786.

VII A Contextual Account of Using People

All the accounts of using people that I have presented so far have contributed enormously to a better understanding of this common sense notion. I have found none of them entirely satisfactory, though, for the reasons given in each chapter. My own account can be seen as combining elements of these other accounts, but it is also an attempt to make better use of the material that is given to us by our common moral discourse. I argued in the introduction of this book that common sense contains a lot more than mere intuitions about the wrongness of acts or vague descriptions of morally relevant act types. It offers beliefs of different levels of abstraction and concepts with diverse functions and abilities. This pretheoretical material is far from being infallible, of course, and cannot even claim to come with particular justification. But common sense notions are sometimes the only material we have and sometimes they also lead us a good part of the way to our theoretical aims. This is true in particular, I believe, for the concept of using people. I therefore want to move backwards through the existing accounts of using people once again and return to the common sense notion that I presented at the beginning of this book.

1. Merits of the existing accounts[1]

The common sense notion of using people presented in the second chapter of this book has left us with a couple of intriguing questions: Is it always wrong to use a person? And if not, how can we distinguish between the legitimate and the illegitimate use of people? (Scope) Is the fact that A uses B a reason that makes A's act wrong? Does the charge of having used another person refer to an agent's attitude or to a particular act by him? (Role) How can we describe the sensation of having been used more accurately and when are we justified in feeling it? (Justification)

The value-based account of using people helps us to give answers to all of these questions and comes closest to a satisfactory account, in my opinion. Let me briefly recapitulate some of its merits, starting with the last question:

If you find out that somebody has been using you, you will typically feel anger or indignation about the person who treated you in that way mixed with a disappointed awareness that your interaction is not what you hope it could be and the conviction that this is not the way you deserve to be treated. The account developed and defended by Thomas Hill, Allen Wood and David Velleman can make sense of this feeling, justify its implicit claims, but also explain when the

feeling has force as a moral reproval. These philosophers have stressed that we should follow Kant in distinguishing between two kinds of values to be able to explain human actions and the normative claims that constrain them: There are values that require our increasing them, i.e. ends to be promoted. But there are also values that constrain our behaviour, i.e. ends to be respected. The former ends are usually future states or events that still have to be brought about through our actions and the latter are self-existent ends that are already there. Velleman puts the difference in the following words:

> 'Self-existent ends are the objects of motivating attitudes that regard and value them as they already are, other ends are the objects of attitudes that value them as possibilities to be brought about.'[2]

This characterization fits well with our common wish to be taken as the person we are and not only as something that can be formed to fit other peoples' ends. But this wish can take different degrees of demandingness. We may wish to be actively cherished and loved as the individuals we are and we may wish to be respected as persons. Only the latter wish comes with strict moral claims. The frustration contained in feeling used can also have these two faces: We may be

frustrated because we realise that we have not found a loving partner, but only a helpmate in satisfying sexual and social needs. This kind of frustration, I agree with Velleman, is also a moral emotion, but it does not ground direct claims on the other. Love is the 'optional maximum' that we can hope for, nothing that we can demand. But respect is the 'required minimum'[3] and we can also be frustrated for not getting our dues in this way. The latter kind of frustration is still connected to the feeling that we are not treated as the person we are because the respect in question is respect for the incomparable value called 'dignity' and this value 'calls for a response to the object *in itself*, not in comparison with others'[4].

Besides frustration, feeling used often involves a feeling of degradation that is expressed by utterances such as 'I am not *merely* a tool'. The value-based account can explain why we feel degraded in this way when someone uses us: Not every self-existing entity can claim to possess dignity. Things and, according to Kant, animals and plants do not have dignity, but only a price. They therefore can be treated according to the value they have in comparison to other entities and need not be treated as ends in themselves. When a human being is treated without respect for her special value she will therefore feel that she is treated 'like an object' or 'as a means' and not as a being with human rank and status.[5] The value-based account thus answers what feeling used consists in and when we are justified in feeling this way by pointing to two Kantian distinctions and by

introducing a distinction between respect and love. They explain that feeling frustrated when somebody uses us is due to the fact that we are thus treated as objects whose value depends on their contribution to some end and not as existent ends that have value in themselves. Kant's distinction between dignity and price, on the other hand, illuminates the degrading aspect of feeling used. Dignity places constraints on our behaviour that do not apply to beings with a price and when these constraints are violated we therefore feel that we are treated like entities of this lower status. We have a right that others respect our dignity and treat us as persons, but we have no right to be loved as the beings we are. If we feel frustrated and degraded because, in addition to respect, we ask for love, then our feeling does not represent a claim, but expresses a moral ideal.[6]

The value-based account can furthermore explain why the common sense notion of using people oscillates between an evaluation of acts and an evaluation of attitudes. Wood, for example, makes it clear that the reaction that is primarily forced on us by the value of humanity is the recognition of this value, i.e. the moral feeling of respect. Respect is thus a *required* attitude[7] and we sometimes express a lack of this attitude by colloquial utterances such as 'You only *regard* me as your tool'. According to the value-based account, all further reactions that are required by the dignity of persons are not required *in addition to* the recognition of that value, but are only derived *through* this required attitude. Dignity thus first requires a

certain attitude and this attitude then requires an adequate kind of behaviour. Wood believes that the adequate behaviour must *express* respect for the value of humanity, whereas I prefer to say that the behaviour must *not be incompatible* with the required attitude. Both approaches explain, though, why it is not surprising that common sense expressions such as 'treating someone as a means' can be used to refer to an act type *and* to an attitude. Such expressions have this double function because they require acts *by* requiring attitudes.

A moral theory that primarily requires attitudes has to prepare for the objection that attitudes cannot be obligatory or that they cannot be required *instantaneously*. Moral duties are believed to be obligatory for every agent *at every moment*, though, and an attitudinal theory therefore does not seem to be able to derive moral duties. Thomas Scanlon expresses such an objection when he says that the wrongness of acts cannot depend on the agent's reasons for action because we cannot choose the reasons for which we want to act.[8] The value-based account of using people escapes this objection, though, because it bases moral duties on attitudes that can be presupposed in every agent. If an agent violates a moral duty he always acts against an evaluative attitude that he embraces himself, according to the value-based account, and therefore contradicts himself. Hill, Wood and Velleman can admit that Scanlon is right with his general thesis about the availability of reasons. They will insist, though, that he ignores the fact that we sometimes implicitly

accept something as a reason for action, but fail to act accordingly. In these cases it can be our reasons that render our act wrong.

With the idea of a self-contradictory subordination of values the value-based account offers a criterion for the wrongness of acts: An act is wrong if I fail to respect the values that I already, at least implicitly, recognize. I have argued, though, that it is difficult to construe a self-contradiction in many cases and that we need further criteria to see which reconstructions of self-contradictions are plausible. I have also mentioned that we need a relevant context for such reconstructions and that the context of using people is such a morally sensitive situation. Somewhat curiously, it is the representatives of the attitudinal account denying an explanatory role for the concept of using people, who accept the existence of a special context of use.

Derek Parfit, for example, says that A uses B, if A makes use of B's abilities, activities, or other features in order to achieve some aim.[9] This characterization is not completely convincing. First, it is circular as the definiens contains the expression 'to make use' that is not independent of the definiendum 'to use'. Second, it allows us to say that 'I use Kant' when I only make use of his texts. This way of talking seems to be only metaphorical, though, as it is odd to say that I *use a person* who has been dead for more than 200 years. To say literally that A uses B, A and B must interact in some way. Thomas

Scanlon accounts for this condition and remarks that for me to use certain other people it has to be true that 'their presence or participation must play a role in what I am doing'[10]. This definition implausibly implies, on the other hand, that I use a person when I make her a present or when I greet her on the street. Besides these details, both definitions come quite close to my analysis of the common sense expression 'to use a person', though, and give us a relatively clear context of interaction: A uses B if B's presence or participation plays a role in A's achieving some aim that points away from B.[11]

This definition is based on the analogy between using tools and using people and states the same conditions for both forms of use. This is plausible insofar as our colloquial talk of 'using people' is inspired by our talk of 'using tools', as becomes clear through expressions such as 'to *instrument*alise' or 'to use someone as a *tool*'. But there are, of course, significant differences between using people and using tools. Tools cannot act by themselves and when we are using tools *we* have to do something with them. Using people, in contrast, also works by activating people so that *they act* and thereby help us to achieve some goal. We can use people not only through their *presence*, but also through their *participation*.[12] Although natural language allows for both forms of using, we usually have the participating form of use in mind when we employ the phrase 'to use a person' *in a moral sense*. This claim about the moral meaning of

using people was implicitly recognized by the procedural account of using people. O'Neill and Korsgaard claim to cover all perfect duties with their interpretation of Kant's prohibition against using people, but actually they only discuss coercive proposals and deception as cases of using people. Deception and coercion both work through the participation of the deceived or coerced person and therefore constitute the more restricted scope of the concept of using people. Although O'Neill and Korsgaard did not see it this way, I believe that the restriction to the mentioned forms of using people is an important insight into the scope of our common sense claim that it is morally wrong to use people. As they wanted their prohibition to have a wider scope, O'Neill and Korsgaard did not argue for the restricted scope they actually accept. I thus want to present such an argument in the next section.

2. Using someone's presence?

The definition that I have adopted from common sense consists of three conditions: For A to use B, A must interact with B, he must believe that B can be helpful in achieving one of A's ends and A's ends must point away from B. This definition includes cases like the following one:

Crossing the River: A has to cross a river to escape from his persecutors. The river is too deep and broad to wade through or to jump over, but it would be sufficient to get something in the river that A could use as a bridge. A therefore shoots a person B standing at the riverbank, B falls into the river and A walks on B's back to the other side.

In this example A interacts with B, he believes B to contribute to his plan and he pursues a goal that points away from B. A therefore uses B according to the definition that I proposed so far. But examples such as *Crossing the River* hardly come to mind when we think about using people in a moral sense. Nevertheless, many of the

examples discussed in the philosophical literature as cases of using people make use of the presence and not of the participation of the other person. Two very famous examples are two variations on the even more famous *Trolley Case*[13]. In the *Trolley Case* a bystander sees a driverless train out of control running towards a tunnel where five people are working. His only chance to save these people's lives is to operate a turnout. Unfortunately there is one other person working on the track to which he could redirect the train. There is great discussion about the moral evaluation of the options open to the bystander. In some arguments it is stressed that the bystander would not be *using* the one person on the second track and would therefore by justified in sacrificing him. This argument can be backed up by the following case[14]:

Bridge: A driverless, runaway train is heading for a tunnel. In the tunnel five people are working who will be killed if the train runs on. Person A is a bystander and has only one chance to stop the train: There is one other person B standing on a bridge above the track. A opens a trap-door, so that B falls in front of the train and triggers its automatic brake.

Proponents of the argument that the bystander is allowed to save the five workers in the original *Trolley Case* because he would not be using the one person, feel confirmed by this example and the typical intuition that it is wrong to throw the man in front of the train. They can argue that this negative intuition is due to the fact that we would use the fat man in *Bridge*, but we would not be using the one person in the *Trolley Case*. In *Bridge* the presence of the fat man plays a role in achieving our aim, whereas the presence of the one person on the side track in the *Trolley Case* is a hindrance rather than a means in our plan. The question of whether a person is used or not therefore seems to be crucial for judging the permissibility of the respective actions. But critics of this argument point to the following counter-example:

Loop Case: The scenario is identical to the Trolley Case with the only exception that the tracks after the one person have the form of a loop and return to the main track heading to the tunnel again.

It is generally argued that in this case we are also using the one person because we now need her presence to save the five workers. If the person were not there, the train would equally run into the tunnel and kill these people. But it is implausible to conclude that in this case the bystander would be acting wrongly, the argument goes, because it is unclear why the form of the tracks should make a moral difference.

For all the participants of this discussion it is out of question that *Bridge* and the *Loop Case* are typical examples of using people. I want to argue, in contrast, that although these cases fit the definition that can be extracted from our employing the expression 'to use' in natural language, they are not relevant as examples of our *moral* claim that it is wrong to use people. It does not matter morally – or it does not matter in the same way[15] – that in these examples persons are used in the sense of the above definition of using people. Using people is morally relevant only when we make use of the participation of that person. This claim can be supported by two considerations:

First, in cases such as *Crossing the River* and *Bridge* the fact that A uses B seems to be irrelevant for judging A's behaviour. It would be equally terrible to shoot B or to throw the fat man from the bridge because you hate them or to do so arbitrarily. This is also suggested by the consideration that if the fat man by chance survives, it is very unlikely that he will complain about having been used. It does not seem to be the right reason with regard to the wrong that has been done to him. In situations where the participation of the other person plays a role in the agent's pursuit of aims, in contrast, the charge of having been used gives reasons that indeed sound convincing. This is the case, for example, when the mother in *The Enchanter* complains of having been used or the young man writes a letter to his pregnant girlfriend complaining 'You were just using me'.[16]

Second, what is morally displeasing about using people is that we use them as means to our ends, although they pursue ends themselves. In cases where somebody makes use of our participation it is thus plausible to *feel used.* On the one hand, we are frustrated not to be seen as the person we are. On the other hand, we feel degraded because the agent's treatment fits entities of lower rank that do not possess the capacity to set ends for themselves. If we make use of someone's mere *presence,* her ability to pursue ends is irrelevant to our reaching our aim and it would thus be strange to feel the special feeling that I have labelled 'feeling used'. It thus seems clear to me, that the central meaning of the charge 'You were just using me' excludes cases that only make use of someone's presence. We should therefore reject the definition of 'using people' that is extracted from our employment of the expression 'to use' with regard to tools *and* to human beings. The analogy is helpful and plays a role in the etymology of the expression, but it obscures the moral core of the charge 'You were just using me!'. I thus propose to accept a slightly changed definition of 'using people': A is using B, if A interacts with B believing that B's *participation* can help him to realize one of his ends, an end that points away from B.

3. Putting the pieces together

We have now gathered elements from all the accounts of using people presented so far. First, I have summarized the value-based account's emphasis on Kant's axiological distinctions and the account's position that duties are to be derived through the idea of required attitudes. Second, I have criticised the value-based account for leaving out the specific context of use as found in natural language and as defined by Parfit and Scanlon. Third, I have argued that we have reason to restrict the scope of this definition of using people and that this was implicitly suggested by O'Neill and Korsgaard, who focus on coercion and deception. These elements have in common that they are all drawn from our common sense concept of using people. So far we have two different interpretations of the intuitively convincing prohibition of using people, though. On the one hand we have the very general interpretation offered by the value-based account that tells us that to treat a person merely as a means is to treat that unconditionally valuable person as if she only had value as a means or any other kind of conditional value. On the other hand, we have the definition of using people according to which we use a person when we interact with her because we believe that her participation can help us in achieving an end that points away from this person. Both interpretations can claim to be

based on our common sense intuitions: While the first definition helps to spell out what it means to feel used, the second definition is extracted from our colloquial employment of the expression 'to use a person'. In the existing accounts of using people both interpretations are unconnected to each other[17], but I think that these interpretations *together* provide an attractive account of using people. Let me now outline how these elements should be connected. As I said at the beginning of this chapter, I will try to do so in a way that makes better use of the material provided by common sense.

It is helpful, I believe, to start by introducing some terminology: I want to suggest that we exclusively use the expression *'to treat a person as a means'* for the general interpretation offered by the value-based account. We thus treat a person as a means, if we treat her as if she only has instrumental or any other kind of conditional value, although we know that she really has unconditional value instead. I will employ the expression *'to use a person'*, on the other hand, to refer to interactions where the agent makes use of another person's participation. Finally, if both features come together, i.e. if in using a person I treat her as a means, then we can say that I *'merely use'* that person. But how exactly are the concepts expressed by these phrases related to each other?

I have argued that it is difficult to construe a self-contradictory subordination of values, if we do not have a clearly defined context

that allows us to see what values are involved and how the agent violates values that he himself accepts. This does not mean, however, that I reject the value-based account's interpretation of the prohibition against treating a person as a means. This comprehensive prohibition is meant to spell out in general what it means to wrong a person and what, in general, makes acts wrong. It is therefore supposed to play the roles that we have called the *'transcendental'* and the *'explanatory'* role so far and I do find it very helpful in fulfilling these tasks. I believe, though, that it is difficult to derive concrete moral duties from this abstract principle directly. What we need is a criterion that tells us when somebody treats another person as a means. To know if A wrongs B, we need to know if A treats B as a means. But to know if A treats B as a means, we need to know if he contradicts his own evaluative beliefs, and we thus need to know what A believes and intends in a given situation. We can describe actions in a way that does not refer to any agent's beliefs and intentions. A purely physical description of an interaction between two people would be of this kind. But we can and generally do describe interactions in a 'thick' way, i.e. we use descriptions that imply that the agent and other participants have certain beliefs and intentions.[18] To decide if someone treats another person as a means we thus need a thick description of the interaction. Now, the expression 'to use a person' is such a thick description as it implies information about the agent's beliefs and intentions. If A uses B he

must believe, for example, that B can contribute to one of his ends and he must not intend this end for B's sake. I therefore suggest that the definition of 'using people' that I have proposed in the preceding section can provide the context that is necessary to derive concrete moral duties from the general prohibition against treating people merely as means. The context of use can thus play a *criterial* role in the derivation of duties according to my account.

The context of use is not the only context where a person is treated as a means. To tell what other contexts there are, we would need to have a comprehensive moral theory. It sounds *prima facie* plausible, though, to suppose that *the intentional harm of other beings* or *intrusions into the body* are examples of further morally sensitive contexts. Proponents of the value-based account believe that we treat a person as a means when we kill her out of jealousy or when we insult her. They also believe that we treat ourselves as means when we commit suicide in order to escape an unpleasant situation. I do not know how to reconstruct a self-contradictory subordination of values for all these moral wrongs. I am convinced, though, that such a subordination *can* be construed for the context of use. Let me now try to show how this subordination can be derived and how the prohibition against treating a person as a means and the context of use work together. The single steps of my derivation should not be taken to be the premises of a deductively valid argument, though; instead they are meant to spell out more concretely the common

intuition that agents who wrong other people often contradict their own values:

1. According to the revised definition of using people A uses B, if A interacts with B because he believes that B's participation can be helpful in realizing an end that points away from B. In using B A thus has the following two beliefs: First, he believes that B can contribute to his ends through her actions and, second, he knows that he does not act for B's sake, but for the ends he is pursuing. If we look at the evaluative implications of these two beliefs we see that A assigns a conditional value to B because he acknowledges B to have a value that depends on the value of his end. Once we accept that persons possess the unconditional and incomparable value that is called 'dignity', we thus see that situations of using people are always morally sensitive. The other person has unconditional value, but we treat her as an only conditionally valuable means to our ends. But the fact alone that the other person contributes to our ends, although she has unconditional value, does not itself violate her dignity, of course. Otherwise the precept to respect every person's dignity would imply a general prohibition of cooperation. The dignity of my interaction partner requires us, though, to recognize that she *not only* has the conditional value she achieves through our end, but also an unconditional value that has to be respected.[19]

2. If A has the first of the two beliefs mentioned above, namely that B can contribute to his ends through her actions, then A has to recognize that B has unconditional value. By intending that B contributes to his end through her participation, A thereby acknowledges that B pursues ends herself. A thus necessarily recognizes that B and A himself are equal in one important respect: Both are autonomous persons and pursuers of ends. A also believes that his own ends are valuable. He does not have to believe that they are absolutely valuable or morally valuable, but he at least believes that they have conditional value. Furthermore, A knows that as a pursuer of ends B equally believes her ends to be valuable in this sense. His own ends are, of course, dearer to him, but he has no reason to believe that his own ends are more valuable in the sense that they condition B's value. In this sense A necessarily recognizes that B has unconditional value.[20]

3. We have thus the following descriptive and evaluative situation: A plans to treat B in a way that assigns conditional value to her because he wants her to contribute to his ends. On the other hand, he recognizes that B's value does not depend on her contributing to his ends. In this situation A has, in general, two chances to escape the charge of subordinating B's unconditional value to his conditionally valuable ends: He can pursue the end for B's sake or he must make sure that B shares his end. If he acts ultimately for B's sake, he does not subordinate her value to his ends because ultimately he acts for

her value. If A is sure that B shares his ends, on the other hand, then pursuing the end is not *his* subordination any more because B pursues the end herself. In a context of use it follows by definition that A does not act for B's sake.[21] There is thus only one chance left for A to escape the charge of treating B as a means: He must attain the belief that she shares his end.

4. If A is convinced that his ends and B's ends *cannot* be coordinated, he would thus have to abstain from the interaction. However, if he is not completely sure whether B is willing to contribute to his ends, he would have to find out if a coordination of ends is possible or not. In the usual case he would thus have to ask what ends B is pursuing and lay open what his ends are. He must ask, in other words, for B's consent. The crucial point is not, though, that a certain process, namely the act of asking for consent takes place, but that A has the justified conviction that his ends and her ends are compatible.[22]

5. The necessity to have a justified belief about the possibility of coordinating his ends with B's ends categorically rules out certain forms of bringing about a cooperation: If A deceives B or makes a coercive proposal to her, then A cannot believe that their ends can be coordinated. Otherwise A would not choose these methods. Let us take an example: When the drug dealer uses the tourist in my example *Drug Dealer* he anticipates her ends. He is convinced that,

in general she wants to help other people, at least if it does not cost her too much. He presents his own end – the suitcase must pass the border – in such a way that it appears to be an instance of her end of helping other people. But he has, of course, a further end: He wants to sell drugs in the neighbouring country and the transportation of the suitcase is only a means to this further end. He also anticipates that the tourist is not willing to contribute to this end. If he could imagine any reason that would motivate her to contribute to his drug trafficking, he would not tell her a story about his sick mother, but present her with a real reason for helping him. But he does not have such a reason as his lying to her shows. He is thus convinced that his ends and her ends cannot be reconciled. Nevertheless, he brings it about through his lie that she contributes to his end and thereby subordinates her pursuit of ends to his own pursuit of ends. He acts as if she only acquires value through her contribution to his ends, i.e. that her value is conditional on the value of his ends. But how can that be? As I argued in section 2, A already believes that B pursues ends by herself and that the value of her cannot only depend on the value of his ends. He thus contradicts his own evaluative convictions.

This derivation was meant to show that we can easily see when the conditions for treating a person as a means are fulfilled in the

context of use. The context alone does not provide the reasons that make the agent's acts wrong. We also need the general prohibition against treating a person as a means to decide if the agent acted wrongly and what makes his acts wrong. The prohibition by itself, on the other hand, does not place us in a position to derive concrete moral duties. It needs to be supplemented by morally sensitive contexts that allow us to construe the self-contradiction that is the prohibition's target. We thus need both a context *and* the general prohibition against treating people as means to be able to tell what acts are wrong, why they are wrong and what it means to say that they are wrong. The context of use provides such a morally sensitive context and allows us to spell out a clear and strict moral duty: It is wrong to use a person *merely* as a means, i.e. it is wrong to use a person in a way that contradicts the agent's own evaluative beliefs about that person's value.

4. A common sense concept

In the second chapter of this book I surveyed the common sense notion of using people. The most remarkable features of this notion

that the survey brought to light were ordered by the two ideas of breadth and depth. On the one hand, we found out that the notion is broad in the sense that we use numerous and slightly differing expressions to refer to it, we use it to characterize attitudes as well as act types, we employ it in diverse contexts, and we see it as related to different kinds of evaluation. On the other hand, the notion also has deep aspects, i.e. there are subsets of rules governing the use of the notion that are clear and elaborate. The rules for employing the expression 'to use a person' are one such example of a clear and "deep" aspect of the notion; the frequently mentioned accusation to 'feel used' is another. The existing accounts of using people differ in the emphasis they put on these deep aspects of using people: The value-based account provides a theoretical background to explain and justify the sensation of feeling used, whereas the procedural account and the attitudinal account stress the special context of using people. My contextual account of using people consists in combining both "deep" aspects of the common sense notion. To use a person in an impermissible way, in my eyes, means to use that person in a way that gives her reason to feel used. I believe furthermore that my account that brings together both "deep" aspects also helps us to make sense of many of the "broad" aspects of our common sense notion:

Our common *talk* about using people is bewildering. We say that 'A uses B' or that 'A treats B as a means' or that 'A regards B as a tool'

etc. and we jump from one of these expressions to the next without recognizing a change in meaning. The different expressions do carry different connotations, though, and it makes sense to employ them more carefully to draw attention to the underlying distinctions. I therefore proposed to distinguish between 'treating as a means', 'using' and 'merely using', for example. This terminology is surely stipulative to a considerable degree, but it is not arbitrary and traces the connotations of our colloquial expressions.

Whoever treats a person as a means performs the mental act of subordinating the value of that person to the conditional value of one's ends, although one knows that the other person has unconditional value. This act is performed by adopting a certain intention that then guides our actions. It was Kant's insight, highlighted by the value-based account, that moral principles require or prohibit the adoption of such intentions or, as we might say more generally, attitudes, that then require certain forms of adequate behaviour. It is therefore not surprising that many of the expressions we use in our common moral discourse refer both to attitudes and act types. 'Treating a person as a means' is one such ambivalent expression. To clarify the relation between attitude and act one could reserve the expression 'to regard a person as a means' for the pure attitude that can also occur without leading to an interaction. The expression 'to treat a person as a means' should be used for all interactions that are done from this attitude. The expression 'to

merely use a person', finally, should only be used when the treatment occurs within a context of use. But even if these expressions are not clearly distinguished in our common moral discourse, it is not a fault of this discourse that it has expressions that refer to both attitudes and acts, but a feature that reveals the tight normative connection between them.

A further aspect of my account of using people is that I pick out a context for the derivation of self-contradictory subordinations of value that is rather formal. It is defined by its intentional structure and not by a situation in life, by the persons involved or by their relationships with each other. Because of this formality the context comprises divergent circumstances. This explains why in common sense we also employ the expression 'to use a person' in many different situations, for example with regard to close interpersonal relationships, to working conditions or to political arrangements.

The descriptive and evaluative beliefs that lead to the self-contradiction involved in merely using a person are part of the meaning of the expression 'to use somebody'. It is thus a thick description[23] that sorts out a morally sensitive context where it is likely that a person is treated as a means. It is for this reason, I believe, that we hesitate to say that we 'use another person' even if we do so in a permissible way. If we interact believing that our interaction partner shares our end, then we master the morally

sensitive situation without fail. But the situation is of a kind that invites the moral misbehaviour that we have called 'treating a person as a means' and we therefore usually employ the expression 'to use a person' only in situations that are morally objectionable.

By looking back on the common sense concept of using people from the perspective of our theoretically enriched account we thus see that our common discourse already contained many of its central aspects. I therefore cannot claim that I have done more than shed light on these aspects and ordered them in a way that yields not a new but a better thick moral concept.

4. Conclusions

I started my investigation with Nancy Davis' sceptical remark that 'moral theorists can get no mileage – positive or critical – out of an appeal to commonsense views about using persons'[24]. I think the accounts of using persons that were developed after Davis made that remark and that I have presented in the preceding chapters are sufficient to contradict Davis' assumption. Moral theorists with

diverse theoretical leanings have actually presented elaborate accounts drawing from Kant but also from our common sense notion of using people. But Davis' scepticism can also be understood in a more restricted sense claiming that the common sense concept of using people does not help us in spelling out what actions are permissible. This critique is actually upheld by Derek Parfit and Thomas Scanlon, although they assign the concept other important roles in their respective theories. I have tried to reject this critique as well and joined the procedural account and the value-based account in assuming that the common sense concept of using people does give us features that make our actions wrong. I do not agree with these accounts, though, in how the concept can play this role. According to my own account, it is the fact that I treat a person as a means that makes some of my acts wrong. But to see that this fact is given we need to have a particular context. One such context is the use of persons and when I treat a person as a means in using her I merely use her and act in a way that is morally wrong.

I do not think that this particular moral duty can and will be accepted by all moral philosophers. The assumption that there is such a duty presupposes some ethical and meta-ethical convictions that are very controversial. I assume, for example, that there is a plurality of values and accept Kant's idea that not only states or events but also individual entities can have value and that this value requires a peculiar kind of reaction. I furthermore consider attitudes to be the

primary objects of moral evaluation. This assumption influences the whole landscape of morality as it not only asks what we owe to each other, but also requires a particular relation to ourselves. It therefore seems to me that the notion of using people will remain controversial among moral theorists.

The appeal of the concept of using people is partly due to the fact that it is deeply entrenched in our common sense morality. It is thus likely that theorists with little admiration for common sense will not be drawn to this notion. These theorists have to offer an alternative and show us how to improve our biased moral convictions, though. It is for this very reason that I believe that we must oppose Nancy Davis' verdict: Every moral theorist can get mileage – positive or critical – out of an appeal to commonsense views about using persons.

There is still one question left that I raised at the end of my second chapter. I asked if the protagonist of Nabokov's novella *The Enchanter* only uses the mother who appears in the story or whether he uses her daughter as well. I already gave an implicit answer to this question by pointing to the fact that the enchanter is trying to manipulate the girl. But even before the enchanter began his manipulative attempts something went wrong with his behaviour. This can be seen at the end of the story when he notices that the girl is not asleep as he presumed, but is actually looking at him while he

masturbates:

> 'For an instant, in the hiatus of a syncope, he also saw how it appeared to her: some monstrosity, some ghastly disease – or else she already knew, or it was all of that together. She was looking and screaming, but the enchanter did not yet hear her screams; he was deafened by his own horror.' (p.57)

While the story's protagonist certainly does not feel attracted by the mother, he feels strongly drawn to the girl. She has characteristics that even make her 'unique and irreplaceable' (p.34) in his eyes. He becomes aware of the superficiality of this attraction, though, when he looks at himself from her perspective. With a sensation of horror he recognizes that he tragically failed to do justice to the girl's real value. She was, after all, only a means for him that he judged according to its capacity to fulfil his desires. Just before his own death he becomes aware that as the creatures we are, we do not value a person by looking at her, but by seeing the world through her eyes.

Notes

1I will not give an overview of all the merits of the theories presented, of course, but focus on the features that I find useful for my own proposal. I am also convinced, though, that the features, to which I draw attention, are the features that best in capture our pretheoretical intuitions.

2David Velleman, “Love as a Moral Emotion,” *Ethics* 109, no. 2 (January 1999): pp.357-358.

3Ibid., p.366.

4Ibid., p.364, my emphasis.

5A careful analysis of degradation as a treatment that does not fit the other person's rank is offered by Jeremy Waldron, “Inhuman and Degrading Treatment: A Non-Realist View - Ms,” April 2008. For Waldron, intrumentalization is one form of degrading treatment, the others being bestialization, infantilization and demonization.

6The value-based approach can also account for examples such as *Friendly Neighbour* (see chapter 2) and explain why we feel that even if the agent does nothing that is morally wrong in the depicted situation, he acts in an objectionable way. Velleman, for example, could say that the young man does not meet his neighbour's ideal of valuable forms of relationship, but the old lady cannot claim that the young man must only interact with her for different reasons.

7We can call this mental state an attitude, but we shall be aware that it is not an attitude in Parfit's sense that confines this word to dispositional states.

8Cf. Thomas Scanlon, *Moral dimensions: permissibility, meaning, blame* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2008), pp.56-62.

9I believe that this is the most plausible definition that can be found in Parfit's recent texts. It is actually a mixture of a phrase from his Tanner Lectures – cf. Derek Parfit, “What we could rationally will. The Tanner lectures on human values,”, p.297 – and the definition in his current work *On what matters*. In this later book Parfit says that we use a person 'when we make any use of this person's abilities, activities, or body to help us to achieve some aim' (p.166). This definition is plausible insofar as it implies the condition that the use must be done

with some aim. The Tanner Lectures' definition misses this aspect, but Parfit used the words 'abilities, activities, or other features' instead of 'abilities, activities, or body'. The addition of the body in Parfit's new definition is instructive, but the earlier definition's openness with regard to other properties is an advantage, because it enables us to include cases where we make use of a person's external properties such as her wealth or her relation to other people. That Parfit wants to include such cases is clear from the cases he discusses like, for example, *Mutual Benefit*, cf. Parfit, “On what matters - unpublished manuscript,” p.166.

10Ibid., p.106.

11Cf. chapter 2.

12This was first noticed by Arthur Flemming, “Using a Man as a Means,” *Ethics* 88, no. 4 (July 1978): 283-298; the distinction was also adopted in the definition of Warren S. Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect,” *Philosophy and Public Affairs* 18, no. 4 (Autumn 1989): 334-351; and, as we saw already, by Scanlon, *Moral dimensions*, p.106.

13The case was first presented by Philippa Foot, “The Problem of Abortion and the Doctrine of Double Effect,” *Oxford Review*, 1967.

14The following two problems are presented by Judith Thomson, “The Trolley Problem,” *Yale Law Journal* 94, no. 6 (1985): p.120. Thomson presents Bridge 2 - often called the Fat Man Case - as an argument in favour of explaining the Trolley Case with help of the concept of use. She then rejects the whole argument, though, because of examples like Loop Case; Scanlon also refers to this latter case as a serious problem for the 'use'-account; cf. Scanlon, *Moral dimensions*, p.120.

15This qualification is meant to leave room for positions that argue that using people does not make these acts wrong but that it makes them worse. This position is defended by Alec Walen, “A Moral Ground for the Means Principle - Ms,” 2009.

16See the example at the beginning of chapter 2.

17This is especially obvious in the account of Thomas Scanlon who clearly distinguishes between the general prohibition that he ascribes to Kant and the concept of using people that he finds in our common morality.

18The distinction between thick and thin descriptions was introduced by Gilbert Ryle, *Collected papers* (London: Hutchinson and C°, 1971), ch.37; Ryle illustrates

the distinction with the expressions 'to contract the eyelids' and 'to wink'. Whereas the first expression is "thin" in the sense that it doesn't tell us anything about the agent's intentions, the verb 'to wink' implies that the contraction of the eyelids was meant to convey some message to a spectator; the term was later adopted in Clifford Geertz, *The interpretation of cultures - selected essays* (New York, NY: Basic Books, 1973), cf. especially ch. 1.

19I therefore follow Kant and many others in distinguishing between using and merely using a person. I want to stress, though, that using persons is already a morally sensitive situation.

20A does not have to acknowledge that B has *absolute* value if that means 'to have value independent of anything else' or 'to be the source of all other value'. For my argument, it is enough to show that B's value is unconditional in the sense that it does not depend on the value of A and his ends.

21The self-contradiction I am trying to construe here only occurs in the context of using another person's participation. It therefore does not rule out paternalism, for example, i.e. acting as if I know better what the other person's ends are. Paternalist behaviour is often wrong, of course, but not for the reasons I am presenting here.

22The notion of consent thus plays a much more limited role in my account than it does for O'Neill, Korsgaard, Parfit and Scanlon. It does not tell us abstractly what may be done, but is only one means to legitimize interactions. One of the problems for the more ambitious use of the notion of consent is discussed by Kant, as we saw, when he argues that consent cannot legitimize slavery and bonded labour, for example. Cf. chapter 3, section 1.

23It is 'thick' in not only in Ryle's, but also in Williams' sense because it refers to an agent's intentions *and* contains an evaluation.

24Nancy Davis, “Using Persons and Common Sense,” *Ethics* 94, no. 3 (1984): pp.405-406.

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